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ABSTRACT

This document, the final report resulting from a two-year study of the use of juvenile records in adult court proceedings and the relationship between age and sanction severity, is of interest to researchers and policymakers concerned with sanction policies for youthful offenders. The introductory chapter provides an overview of the controversy surrounding the two-track system of justice. Later chapters review the evidence concerning the relationship between age and crime, by using arrest statistics and looking at individual career patterns. The relationship between sanctions and age is examined from several perspectives, including a reanalysis of the pattern of sanctions by age and an appraisal of new data gathered from cases in Los Angeles County, Franklin County, Ohio, and New York City. A sample of adult prison inmates is described, and the severity of their sanctions before and just after becoming adults is discussed. Findings from a survey of prosecutors concerning their access to and use of juvenile records in adult court proceedings are included. The final chapter explores the implications of the project findings for further research and policy development. (Author/NRB)

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AGE, CRIME, AND SANCTIONS: THE TRANSITION FROM JUVENILE TO ADULT COURT

PREPARED UNDER A GRANT FROM THE NATIONAL INSTITUTE OF JUSTICE
U.S. DEPARTMENT OF JUSTICE

PETER W. GREENWOOD, JOAN PETERSILIA, AND
FRANKLIN E. ZIMRING

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PREFACE

This document is the final report resulting from a two-year study of the use of juvenile records in adult court proceedings, and the relationship between age and sanction severity. The study was supported by the National Institute of Justice, Department of Justice, under Grant 78-NI-AX-0102. The report should be of interest to both researchers and policymakers concerned with sanction policies for youthful offenders.

The study was carried out at The Rand Corporation, with Franklin Zimring serving as a Rand consultant for the course of the research.

EXECUTIVE SUMMARY

Every jurisdiction in the United States operates two separate systems for responding to criminal conduct—one for juveniles and one for adults. These systems are governed by different laws, follow different procedures, use different terminology, and operate under different philosophies as to their purpose and the nature of the suspects who come before them. The factor that determines which system deals with a particular individual is *age*. Depending on the laws of a given state, a criminal suspect younger than 16, 17, or 18 is handled by the juvenile court; those older than 16, 17, or 18 are dealt with by the adult criminal courts.

This division of authority, often referred to as the "dual system" of responding to young offenders, has only lately been subjected to scrutiny. How does this dual (or "two-track") system affect the sentencing of offenders who, while legally juveniles, have demonstrated a sustained commitment to serious predatory crime, or who have just crossed the age boundary between the juvenile court and the criminal court? A number of recent commentaries assert that these youthful offenders[1] receive more lenient treatment than their older peers. Some people question whether such leniency is appropriate, given that sentencing criteria in the adult courts are moving away from rehabilitation and more toward punishment and community protection.

This debate is not simply academic. Many jurisdictions are looking at a variety of reforms that would change the way in which serious youthful offenders are treated. Among the proposed reforms are:

- Reducing the juvenile court's maximum age limit from 18 to 16, so that older juveniles must be tried in adult courts.
- Increasing the use of juvenile records, particularly in adult courts, to help identify high risk offenders and treat them accordingly.
- Replacing the juvenile court's rehabilitation philosophy with a get-tough policy in which the sentencing objective becomes punishment that fits the crime.
- Mandatory sentencing of juveniles charged with specific, violent crimes.
- Special programs for prosecuting juvenile career criminals.
- Replacing the two-track system with a three-track system that would include (1) a family court for neglected and dependent youths under 14 years of age, (2) a juvenile court for 14- to 18-year-olds whose crimes are not particularly serious, and (3) a criminal court to handle offenders over 18, and juveniles whose crimes are serious.

Despite the far-reaching consequences of these and other proposed reforms, little was known about how these young offenders were being treated, how the juvenile court responded to specific types of juvenile criminal behavior, and what happened as offenders moved up from the juvenile to the criminal court. To test empirically some of the current beliefs and assertions involved in the debate over reforming the system for dealing with youthful crime, and to provide a basis for estimating the effect that some of these reforms will have we designed a study to explore three important areas:

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[1] The term "youthful offenders" includes both young adult and juvenile offenders.

1. *The relationship between age and crime seriousness.* The belief is widely held that young offenders account for a disproportionate share of serious crime but receive substantially more lenient sentences than older offenders receive. Aggregate figures on the number of arrests and prison commitments for different age groups support this belief. We conducted a review of previous studies to determine whether the crimes committed by youths, within any specific crime category (e.g., burglary, robbery), tended to be less serious than those crimes committed by older offenders. If they were, then this difference in crime seriousness would explain some of the apparent leniency toward young offenders. It would also indicate that arrest statistics exaggerate the amount of serious crime accounted for by youths.
2. *The effect of age on criminal sanctions.* Using computerized data files that had been assembled for other studies, we explored whether juveniles and young adults receive more lenient sentences than do older adults charged with comparable crimes, and whether the differences in sentence severity among different locations could be attributed to any particular aspect of local sentencing policy.
3. *The degree of information-sharing that goes on between the juvenile and criminal courts.* Some people believe that the inability of adult courts to use juvenile criminal history information is one principal reason why young offenders are treated more leniently. In our analysis of this area we used information from a national survey of prosecutors.

AGE AND CRIME

Arrest statistics from the FBI Uniform Crime Reports are frequently cited as evidence that youths, aged 16 to 21, account for a disproportionate share of predatory street crime. In 1978, youths 16 to 21 represented only about 12 percent of the population but accounted for 40 percent of all property crime arrests and 46 percent of all robbery arrests. The peak arrest age for any one of the seven index crimes was between 15 and 20.

Although these years may represent the most active period of criminality, our review of the evidence indicates that arrest figures probably exaggerate the crime threat posed by the young. This bias can be attributed to at least three factors:

First, within any broad category of crime (such as burglary, robbery, or assault) the offenses committed by younger offenders tend toward the less serious end of the spectrum: the targets of theft are less serious; the degree of arming less lethal. Second, younger offenders are much more likely to engage in group crimes than to act alone. This tendency toward group behavior leads to an overestimate of the true chance of victimization from youths. For example, two burglaries may represent the same degree of social harm even though one is committed by a single adult and the other by four juveniles. But if both crimes result in arrests, they will produce arrest frequency statistics indicating that the risk of burglary by juveniles is four times greater than that by adults—a grossly inflated estimate.

The third bias in arrest statistics is introduced by differential responses by the police according to the age of the suspect. A number of analyses—and anecdotal evidence from police officials themselves—appear to support the contention that at marginal levels of criminal behavior, the police are more likely to make an arrest if the offender is a juvenile than if he or she is an adult. In fact, some of the recent increase in arrests for violent juvenile crimes would appear to reflect an increase in this tendency of the police to arrest for marginal criminality, rather than to indicate a true increase in violent juvenile behavior.

The actual degree of bias encountered in arrest data cannot be established at this time. But any future analyses of sanctions for different age groups need to introduce controls for crime seriousness so that findings are not distorted by systematic differences in the seriousness of the underlying behavior.

AGE AND SANCTIONS

When this study began, the available data suggested that young adults receive substantial sentencing breaks when they first come under the jurisdiction of the adult criminal court. For example, arrest rates decline steadily with age after 18, while the rate of imprisonment continues to increase up to about age 30. The ratio of imprisonment for robbery to arrests for robbery for 23-year-olds is two and a half times as high as for 19-year-olds. Studies of felony disposition patterns consistently indicate that the probability of incarceration increases substantially with the severity of the defendant's prior record, and prior record obviously increases with age. Case histories of career criminals show that during the early stages of their careers, they were much less likely to be incarcerated for any specific type of arrest.

We wanted to determine whether this apparent leniency toward young adults existed in the various locations examined and over what age range it persisted. For this analysis we used existing data files from three jurisdictions representing different regions of the United States—Los Angeles County, Franklin County (Ohio), and New York City. In New York, the jurisdiction of the family (juvenile) court ends at the 16th birthdate; in California and Ohio, juvenile status ends at the 18th birthdate.

For Los Angeles, we examined the disposition of robbery, assault, burglary, and auto theft arrests using the 1977 Offender Based Transaction System. In Franklin County we analyzed a sample of cases compiled by the Academy for Contemporary Problems for defendants charged with violent felonies in 1973. For New York, we analyzed the disposition of robbery and burglary cases contained in a sample of arrests made in 1971 and compiled by the Vera Institute of Justice.

Our analysis revealed that the treatment of young adult males varied in several important ways among the three locations. The principal effects are summarized in Table S.1.

In Los Angeles we did not find that young adults were treated more leniently as measured by their conviction rate, incarceration rate, or state commitment rates. In fact, for most crimes, 18-year-olds faced a slightly higher risk for any of

Table S.1

Summary of Age-Sanction Effects for Three Study Jurisdictions

Jurisdiction	Conviction Offenses Analyzed	Leniency Shown to Young Adults as Compared to Older Offenders		
		Conviction Rate	Incarceration Rate	State Commitment Rate
Los Angeles County	Robbery, assault, burglary, auto theft	None	Slight, for burglary only	Slight, for burglary only
Franklin County, Ohio	Violent felonies	None	Yes	Yes
New York City	Burglary, robbery	Burglary only	Yes	Yes

these outcomes than did older offenders. Only for burglary did we find a small increase in the probability of incarceration or state commitment with age.

There is only one consistent sentencing concession to youth in Los Angeles County: offenders under 21 who are sentenced to serve state time are usually sent to the California Youth Authority rather than to state prison. For instance, 87 percent of the 18-year-olds in our sample who were committed to state facilities went to the CYA. Since the average time served there is only about one-third as long as the prison term for a comparable crime, these CYA commitments do represent a break for young offenders in average time served.

In Franklin County, young adults were less likely to be incarcerated than older offenders. Table S.2 illustrates this point with comparative figures on the percentage of convicted robbery defendants who were sentenced to terms of more than one year. In Los Angeles, the percentage is about the same for defendants 18 to 20 years old or 21 to 25 years old—about 37 percent. In Franklin County, these two age groups face very different risks: in the 18-20 age group, 33 percent receive state commitments; in the 21-25 group, 56 percent receive state commitments—a 70 percent increase over the younger age group.

Table S.2

Percentage of Convicted Robbery Defendants Sentenced to More Than One Year

Age	Percent of Defendants Sentenced		
	Los Angeles	Franklin County	New York City
16-17	-	-	4
18-20	36	33	28
21-25	38	56	26

Finally, for New York City the tables show that the youngest age group in the criminal court gets a considerable break. But after age 18, sentence severity remains fairly constant. The extremely low frequency of sentences longer than one year for the 16-17 age group in New York shows that lowering the maximum age jurisdiction of the juvenile court does not necessarily lead to tougher sentencing. In fact, for Franklin County we had information that permitted us to compare the dispositions of juvenile offenders with those of young adults. The oldest juveniles (aged 16 to 17) and the youngest adults (aged 18 to 19) were convicted and incarcerated at about the same rate.

We had reason to believe that the situation in Los Angeles might be quite different. A prior study of the dispositions for a sample of all types of 602 (criminal) offenses in the Los Angeles Juvenile Court indicated that the average conviction rate for juveniles was only about 17 percent. Since the conviction rate for adult felony arrests is about 50 percent, it appeared that juveniles might be getting substantial breaks.

To look at this question we selected a sample of approximately 200 male juvenile arrests, equally divided between residential burglary and armed robbery. We selected these two offense categories to provide a range of seriousness and to insure that the estimated juvenile sanction patterns would not be deflated by the inclusion of minor juvenile offenses that would not be comparable to adult felony cases.

As in Franklin County, the oldest juveniles in this sample were treated no more leniently than young adults. Their conviction rates and incarceration rates were approximately the same. The disposition of younger juveniles differed primarily in that they were more likely to be released without any confinement after conviction.

Our comparison of age-disposition patterns across these three sites points to several conclusions:

1. There is no one national sanction policy for youth. The severity of sanctions for youths, in both absolute and relative terms, varies considerably across sites.
2. The degree of variation appears to be crime-specific. For violent crimes, age and prior record appear to make less difference. The court appears to focus on the degree of violence in the charged offense: the degree of arming, injury to the victims, and the defendant's degree of participation in group offenses. For property crimes—particularly burglary—there is less focus on the instant offense and more attention paid to age and prior record.
3. Variations in sanction severity across sites cannot be readily explained by differences in organization or procedures. Rather, sanction patterns for youth appear to result from the interaction among a number of policy matters such as the maximum age jurisdiction of the juvenile court, the accessibility of juvenile records, the priorities of the prosecutor, and the views of the bench concerning the culpability and reformability of youth.

USE OF JUVENILE RECORDS IN CRIMINAL COURTS

Some people believe that the policies restricting the disclosure of juvenile criminal records prevent officials from identifying serious young offenders when they move up to the criminal court from the juvenile court. This lack of information-sharing between the juvenile and adult systems may be a contributing factor in more lenient sentences for young adults. But the degree to which information is shared in actual practice had never been explored.

Our data on the role of juvenile records in adult criminal proceedings come from a national survey of prosecutors conducted specifically for this purpose. The survey asked prosecutors their opinions about the accessibility, quality, and use of both juvenile and adult records in their jurisdictions. The survey paid particular attention to those offenders who had "graduated" from juvenile court just one or two years before.

Half of the prosecutors reported they would normally receive little or no juvenile record information on even the most serious young adults in their jurisdiction. When juvenile records were available, they were often incomplete and difficult to interpret, and they arrived too late in the criminal proceedings to affect early decisions, such as whether to file criminal charges. In a hypothetical case of a serious young adult felony defendant, only 28 percent of the prosecutors said they would have knowledge of his juvenile history at the time of the preliminary hearing.

Because of resource constraints, prosecutors rely for the most part on the juvenile records provided by the police, which means they are usually restricted to local rather than statewide arrests and dispositions. Although they judge probation department records to be more accurate, they retrieve such information only in the most unusual circumstances.

There was considerable variation across the country in the extent, quality, and use of juvenile records in the adult court. Surprisingly, the state statutes governing the protection of juvenile records do not appear to affect the access to or use of such records. Instead, by restricting the flow of disposition information, legal protections appear to affect only the quality of available records. In other words, efforts to restrict access to juvenile records may cause the adult courts to use more problematic data than they would if the restrictions were not in effect.

Not all jurisdictions have poor juvenile records; approximately 15 percent of the jurisdictions reported that they had complete information-sharing between the juvenile and adult courts and that the records were good. These jurisdictions were more likely than others to have: complete juvenile histories provided by the police prior to the preliminary hearing; no legal restrictions governing the fingerprinting and photographing of juveniles, or the maintenance of juvenile records; a formal Career Criminal Prosecution unit; pre-sentence reports which routinely contain juvenile histories; and juvenile records stored in a centralized location. Having a computerized juvenile record-keeping system did not relate to the prosecutor's assessment of the quality or amount of information he received, or the effect of such information on case dispositions.

It appears that accurate and timely information-sharing requires more than a policy directive from a single agency (e.g., the prosecutor). It requires a systemwide consensus that such information-sharing is appropriate.

CONCLUSIONS

This study explored the largely uncharted territory of how youthful offenders —ages 16 to 21—are treated during that time when legal responsibility for dealing with their criminal behavior is shifting from the juvenile to the adult court. The study was prompted by a concern that these offenders, who account for a disproportionate share of serious crime, might be receiving inappropriately lenient sentences, partly because the two court systems do not adequately share information about offenders' previous behavior.

Our finding of a positive relationship between age and average crime seriousness for young offenders prompts us to conclude that aggregate arrest figures probably exaggerate the amount of serious crime that can be attributed to this age group. This exaggeration also appears to inflate the degree of leniency with which these offenders are treated. Future studies of sanction policy should attempt to control for this relationship by examining sanctions for *specific* forms of criminal behavior rather than for such broad offense categories as robbery and burglary, which cover a wide range of actual behavior.

Our analysis of case disposition patterns disclosed a wide degree of variation among the three different sites, both between offenders of the same age across sites and in the relative severity with which different age groups are treated within sites. The sentencing patterns across these sites could not be fully attributed to organizational or legal differences between them.

From our survey of prosecutors, we conclude that there is considerable variation in the extent to which different jurisdictions have access to and make use of juvenile criminal history information in adult criminal proceedings. Much of the observed variation appears unrelated to legal restrictions placed by state law on the use of such data. Rather, it appears to come from differences in local policy and circumstances—such as the quality of local record systems and the persistence with which police, prosecutors, and court personnel attempt to obtain these records.

But if young adults receive more lenient sentences than older offenders in a particular jurisdiction, as this study indicated they did in Franklin County and New York City, this practice can stem from a number of organizational and policy influences, of which information-sharing is just one.

Some of these influences concern the existence and function of the juvenile court. If juvenile records are unavailable in criminal court proceedings, prosecutors or courts have no basis on which to assess prior misdeeds in deciding on the appropriate sentence for "new adults" just entering the criminal court system. Our survey of prosecutors disclosed that complete unavailability was the exception rather than the rule. But even where some information-sharing does occur, criminal court officials may view prior indications of juvenile crime differently than they would if the same acts were committed as an adult. Most of the prosecutors who responded to our survey supported this view.

Beyond the effects created by the dual system, there are at least three criminal court policies that may result in leniency toward young adult offenders:

1. Criminal courts may have special policies toward young offenders based on theories of diminished responsibility, different prospects for rehabilitation, or the avoidance of punitive labels. Such policies are based on age rather than on any particular view of juvenile courts or prior juvenile records.
2. Criminal courts may extend lenient treatment toward all offenders with relatively short criminal records. Such policies benefit a disproportionate number of younger offenders because of their short periods at risk in juvenile and criminal courts.

3. Criminal court policies that focus attention on "career criminals" with extensive prior records may result in apparent leniency for young adults.

Neither the number of sites in our sample nor the limited amount of information we had for each case was adequate to explore the relative influence of these different factors. But the evidence from our three sites does provide some preliminary support for several of these theories.

For example, if we hypothesize that leniency toward young adults is caused primarily by the influences of the dual system, then it follows that this leniency should persist longer in sites that have a higher maximum age jurisdiction for their juvenile court. This is in fact the pattern we observed in comparing Franklin County, where juvenile court jurisdiction does not end until the 18th birthdate, with New York City, where it ends at the 16th. The differential leniency given young adults was observed only during the first two years in the adult system—for ages 16 and 17 in New York City and for ages 19 and 20 in Franklin County.

Also, if we hypothesize that inadequate information-sharing between juvenile and criminal courts results in more lenient treatment of young adults, then it follows that the leniency should be greatest in jurisdictions where information-sharing is limited by law or practice. Of the jurisdictions that responded to our survey of prosecutors, Franklin County ranked among the lowest in the degree of information-sharing and young adults received substantial sentencing breaks there. In Los Angeles County, which ranked highest in information-sharing, they did not.

As we indicated earlier, this study has contributed to the current reform discussions by providing new evidence in what has been, up to now, a data-free debate. We have shown that much of the current wisdom concerning the effects of the two-track system on sanction severity is too simplistic. We have shown that some current assumptions are wrong.

The interactions between age and offense seriousness are clear and must be controlled for in future studies. The pattern of sanction severity for youth crime varies considerably across sites in ways that cannot be anticipated by formal legal and organizational differences. The availability and use of juvenile records in adult court proceedings were found to be governed by local policy rather than state law, and were heavily influenced by the priorities of the prosecutor.

The age of low cost, opportunistic sanction studies, concerning either the effects of specific policy factors on sanctions or the effects of sanctions on crime, appears to be over. Although such studies may provide interesting data, carefully collected disposition data allowing for control on both age and offense seriousness provide the only way to rigorously investigate youth sanction policy.

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FOREWORD

by Franklin E. Zimring*

Three suspects have been arrested for residential burglary. One is 14, a second has just celebrated his 18th birthday, and the third is 21. Does the age of the suspect play an important role in what happens next? Should it? Specifically, *should* the age of the suspect play an important role in deciding what kind of institution will process his case, how the case will be processed, and what set of social policies enters into the disposition of those found to have committed burglaries? If any of the three suspects is arrested again some time in the future, does the age at which the earlier burglary was committed play a role in whether police, prosecutors, and sentencing judges should have access to information about this prior transgression? Should it? These are not small questions. They are not easy questions, either.

Any comprehensive discussion of the relationship between age, crime, and criminal justice policy involves questions of fact as well as values. The value questions inherent in sorting out legal policy toward young offenders have for some time been the subject of lively debate. Unfortunately, that debate has been conducted in an empirical vacuum: until quite recently, little was known about how juvenile courts responded to specific forms of youth crime, and almost nothing was known about the impact of youth on sentencing decisions in criminal court.

In part, this can be attributed to balkanization within the legal system and the tendency for scholars to confine avenues of inquiry to particular sets of legal institutions. Doctor Smith would study the juvenile court while Professor Jones studied sentencing in criminal court. Smith and Jones would attend different conventions and publish in different journals or in different departments of the same journals. This kind of compartmentalization leads us away from studying social and institutional responses to adolescent crime as a whole, and the interrelationship between juvenile courts and criminal courts as adolescents age-out of one system and into the next.

The allocation of dispositional power in both juvenile and criminal courts has contributed its fair share to our current low level of empirical knowledge. In the juvenile court, the choice between custodial and noncustodial sanctions has been traditionally at the total discretion of the individual juvenile court judge. When institutional commitments were made, the duration of confinement was typically indeterminate. This same veil of discretionary judicial power and indeterminate custodial sentences was a major characteristic of sentencing procedures in the criminal courts. Discretionary decisions hide rather than announce the real reasons they are made. When sentencing policy is dispensed by a series of low-visibility discretions, a system can have a policy for youthful offenders without announcing it, and not infrequently without knowing it.

All this is changing. Youth crime, particularly youth violence, is an increasingly important topic in the public policy debate about criminal and juvenile justice. And four characteristics of recent scholarly and legislative discussion of reform of sentencing make it highly unlikely that we can continue to rely on the institutions of the status quo and unarticulated (as well as unexamined) premises in setting policy toward youth crime.

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There is, first, concern about the inadequacies of the institutions of both juvenile and criminal justice. Some argue that juvenile courts are coddling young criminals. Others regard contemporary juvenile justice as too harsh. A third school of thought argues that juvenile courts are both too lenient (in hard-core cases) and too severe (when responding to less serious crime). The criminal courts of our major cities are also under assault, simultaneously accused of being too lenient and too severe. There is deeper agreement, in an age of declining faith in the rehabilitative ideal, amongst almost all combatants, that the institutions that sentence young offenders operate without coherent principles.

There is serious concern in recent years about the lack of coordination between the juvenile and criminal courts on matters such as information-sharing, priorities in sentencing policy, and a supposed inconsistency in the aims of the criminal law and the juvenile courts. This second concern need not be associated with any particular ideology: It is proper to worry about a set of institutions that puts the offenders' "best interests" first prior to the 17th birthday and ignores them thereafter, whatever one's view about the proper role of the offenders' interests in a sentencing decision. Belief is widespread that just such ideological discontinuity exists in juvenile and criminal courts. This is a widely shared belief—but the data base is thin.

A third characteristic of recent policy discussion is a function of the shift toward specificity in criminal justice policy. Policy discussions that used to begin by asking what we should do about "crime" or "criminals" are happily less fashionable in 1980 than in 1970. Instead, current debate reflects a growing realization that we live in a world with many types of crime, different kinds of offenders, and the need to make situation-specific rather than sweeping policy decisions. In such a world, we need to know what role an offender's youth does play in police, prosecutorial, and sentencing behavior before beginning a coherent discussion of appropriate paths to reform. This shift of focus renders our present ignorance of how different systems work, and why, into an embarrassment of major proportions.

Finally, the lawlessness of totally discretionary sentencing has come under sustained and successful attack in the criminal justice system; unguided discretion is also being heavily criticized by students of the administration of juvenile justice. In many jurisdictions, discretionary systems have been supplanted by a rule-orientation in the reform of substantive sentencing law and sentencing procedure. As rules supplant discretion, the issue of appropriate policy toward the young offender is inevitably pushed out of the closet. To live in a world in which rules determine sanctions requires that we make up our mind about when age makes a difference, and why.

This pilot study probably should have been done 20 years ago. It would have been useful then; it is an absolute necessity in the policy environment of the 1980s. And it is only a pilot study. Much more needs to be done, and quickly. All of the usual rhetoric about "first steps" and "the need for further research" indisputably fits the state of our knowledge about the relationship between adolescence, crime, and criminal justice policy. The report thus stands as a challenge that no balanced policy analyst can lightly regard. I am pleased to have played a role in issuing that challenge.

I. INTRODUCTION

Every major jurisdiction in the United States has two discrete legal systems charged with responsibility for responding to criminal conduct: a juvenile or family court given responsibility for handling most young offenders under a specified age, and a criminal court responsible for handling the remainder. This division of authority has been referred to as the "dual system" of responding to young offenders. The assumptions, characteristics, and results of such a division of authority have only lately been subject to scrutiny. Of particular interest is the effect of this dual, or two-track, system on sentencing policy for offenders who, while legally juveniles, have demonstrated a sustained commitment to serious predatory crime, or who have just crossed the boundary between the juvenile court and the criminal court. A number of recent commentaries have asserted that these youthful offenders are the subject of more lenient treatment than their older peers. There is also some discussion of whether such leniency is suitable, given the shift in adult sentencing criteria away from rehabilitation toward punishment and community protection.

This debate is not simply academic. A number of jurisdictions are now contemplating a variety of reforms that deal explicitly with the serious youthful offender issue, among them: reduction in the age at which jurisdiction transfers from the juvenile court to the criminal court; mandatory sentences or structured sentencing guidelines for juvenile street crime; more systematic compilation and use of juvenile criminal histories for sentencing purposes; and introduction of a third court system, falling between the current juvenile and adult criminal courts. In many jurisdictions there appears to be a political consensus that serious youthful offenders are not being handled appropriately, and that some type of organizational or procedural change is called for.

In addition to the obvious interest in estimating the impact of these proposed reforms, there should be a larger policy interest in the relationship between age and sanctions (treatment). All of the recognized utilitarian purposes of sentencing—deterrence, incapacitation, and rehabilitation—appear to be highly sensitive to age, and require knowledge about youthful criminal activities.

Deterrence refers to the crimes that are prevented by the potential offenders' fear of possible sanctions. Although empirical research on deterrence is still in its infancy, it would appear that information about the expected sanction for different types of crime is communicated informally among peers, rather than through official channels. In fact, official agencies often are not aware of the sanction risk for different crimes.

Deterrence theory also suggests that the threat of any given sanctions may be more effective in preventing crimes among less experienced offenders than among older offenders who have become hardened or committed to a criminal lifestyle. These two hypotheses taken together suggest that the pattern of sanction severity by age may be a critical factor in determining the deterrent effect achieved by the sentences in any given site, a consideration that has been completely overlooked in the deterrence research to date.

The incapacitation effect of a given sentencing policy is the crime not committed by offenders while they are incarcerated. The magnitude of the incapacitation effect for any given level of imprisonment depends on what would have been the future criminal behavior of those incarcerated. The more successful a jurisdiction is in identifying and incarcerating the higher rate offenders, the greater the incapacitation effect. Since current research on individual offense rates appears to indicate that the level of criminal activity declines with age, jurisdictions that postpone imposition of incarceration until the later adult years will achieve smaller incapacitation effects. Also, since juvenile records are the best available predictors of young adult criminality, those jurisdictions with low levels of information-sharing between the juvenile and adult court, or inadequate juvenile records, will be less successful in identifying high rate offenders for incarceration.

Finally, what little evidence there is to suggest that some rehabilitation programs may work sometimes for some people[1] indicates that community treatment and intensive supervision may be more effective for unadvanced offenders, while traditional confinement is more effective for advanced offenders. Again, juvenile records are necessary for making this distinction among young adults.

This report describes a first attempt to examine systematically the issue of sanctions and age and the consequences for offenders as they pass from the jurisdiction of the juvenile court to that of the criminal court. The research involves a review of previous studies, analyses of disposition patterns by age in a number of jurisdictions, including new data on juvenile disposition patterns, and a survey of prosecutors concerning their access to and use of juvenile criminal history information in criminal court proceedings.

Our basic conclusion, based on the analyses contained in this report, is that sanction policy for youth crime is vague and undefined. Most jurisdictions do not maintain records that allow them to determine the severity of sanctions administered by their juvenile court. Most are not able to examine the way young adults are treated relative to older offenders. Our examination of sanction patterns for youth crime shows differences between sites not directly related to their legal and organizational differences. Rather than being explicitly determined, sanctions for youth crime appear to be the unplanned result of a complicated interaction among a number of independent policy decisions, such as the age at which the juvenile court's jurisdiction terminates, the protection afforded juvenile records, the investment in data systems that make criminal history information readily accessible, the development and operation of special treatment facilities, or the priorities of the prosecutor. This finding contrasts quite sharply with the findings of other researchers[2] who have asserted that leniency toward youth crime is a demonstrated fact.

In the current debate about juvenile court reforms we do not see any attempt to empirically document the alleged deficiencies of the current system nor do we see any basis to predict the consequences of most of the proposed reforms. In fact, our analysis suggests that the effect of some of these reforms could be just the opposite of what is intended. In those places where leniency toward youth crime is assumed to exist, this leniency is assumed to result from the two-track approach. Most of the reforms proposed are intended to shift more serious juveniles into the adult system or to break down those distinctions between the two systems that are thought to exist. This approach in itself may be counterproductive. In a later chapter of this report, we outline a number of plausible yet untested hypotheses which may explain sentencing leniency toward young offenders in adult courts and which are unrelated to the two-track approach. In sum, we find many of the current proposals for reforming the two-track system premature—based on misleading data and untested assumptions.

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[1] T. Palmer, *Correctional Intervention and Research*, Lexington Books, Lexington, Massachusetts, 1978; D. Lipton, R. M. Martinson, and J. Wilks, *The Effectiveness of Correctional Treatment*, Praeger, New York, 1975.

[2] Barbara Boland and James Q. Wilson, "Age, Crime, and Punishment," *The Public Interest*, No. 51, Spring 1978, pp. 22-34.

We begin in Chapter II with a review of the evidence concerning the relationship between age and crime, first using arrest statistics and then looking at individual career patterns. In Chapter III we examine the relationship between sanctions and age from a variety of perspectives. We begin by reviewing the evidence and assertions about this relationship that existed when we began our work. From there we examine the pattern of sanctions by age in a number of sites, either reanalyzing existing data sets or examining new data collected for the project. We begin with Los Angeles County, looking at both juveniles and adults. Then we look at a sample of adult prison inmates and examine the severity of sanctions they experienced just before and just after becoming adults. Next we analyze a sample of juvenile and adult defendants charged with violent crimes in Franklin County, Ohio. Finally we examine the disposition pattern for a sample of felony arrests in New York City.

In Chapter IV we report on the survey of prosecutors concerning their access to and use of juvenile records in adult court proceedings. In Chapter V we explore the implications of our findings for further research and policy development.

II. AGE AND CRIME

> *The general pattern is quite clear. Persons under the age of 18 constitute about one-fifth of the total population, but they account for one-quarter of all persons arrested and nearly one-half of all those arrested for the seven "index" crimes.*
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> • • •
>
> *Far from overstating the amount of juvenile crime, arrest data actually understate it by a considerable margin.*
>
> —Barbara Boland and James Q. Wilson, "Age, Crime, and Punishment," *The Public Interest*, No. 51, Spring 1978.

One frequently reads that America's crime problem is primarily a problem with its youth, that young people account for a disproportionate amount of serious crime and make up the most criminogenic segment of the population. It is now being argued that the criminal justice system must do more to curtail the crimes of the young and that tougher treatment is called for.

In this chapter we review and evaluate the evidence on which these assertions are based. It is not our purpose to determine the relative degree of risk posed by various age groups. That is beyond the scope of this study. Our goal is to review the state of knowledge from which such an assessment could be made and to determine whether firm conclusions are premature.

We conclude that, while youths may participate in crime more actively than adults, their degree of participation may be exaggerated by arrest statistics. An accurate assessment of youthful criminality requires more careful controls on reported offense severity than is provided by current data files.

ARREST RATES

The most frequently quoted source for inferring that youths are at the core of the crime problem is the FBI's arrest figures in the Uniform Crime Reports. These figures for 1978 show the following:[1]

- For the seven index offenses that comprise the FBI's uniform crime index, youths aged 16 through 21 accounted for 39 percent of all arrests.
- Youths aged 16 through 21 accounted for 34 percent of all violent arrests, 40 percent of all property arrests, and 46 percent of all robbery arrests.

Since this age group represents only about 12 percent of the total population, there can be no argument that this age group is overrepresented in terms of serious arrests.[2]

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[1] *Crime in the United States 1978*, FBI Uniform Crime Reports, U.S. Department of Justice, October 1979.

[2] These arrest figures are corroborated by victimization survey data which show that in Washington, D.C., for instance, 47 percent of all single offender robberies and 72 percent of all multiple offender

Another way of viewing the picture provided by age-specific arrest rates is provided by the figures in Table 2.1. These figures show the peak arrest age and the ratio of peak arrest rate to arrest rate at age 23 for the seven index offenses plus drugs and vandalism. The peak arrest age varies by offense type from 15 for vandalism to 20 for homicide, with the peak for most offenses between 16 and 18. On the youth proneness scale, the robbery arrest rate at age 18 is 1.86 times the arrest rate at age 23; the burglary arrest rate at age 16 is 3.73 times what it is at age 23. Again, the data clearly show that youths between 16 and 21 account for a disproportionate number of arrests.

Table 2.1

PEAK ARREST AGE, YOUTH PRONENESS, AND ANNUAL ARREST RATE PER 100,000 MALES BY OFFENSE, 1973

Offense	Peak Arrest Age	Youth Proneness (Peak Arrest Age Rate/Age 23 Arrest Rate)	Annual Peak Rate of Arrest per 100,000
Homicide	20	1.00	25.4
Rape	18	1.25	41.8
Aggravated assault	18	1.14	297.0
Robbery	18	1.86	338.2
Burglary	16	3.73	1476.4
Larceny	16	2.81	2407.0
Auto theft	16	5.21	497.8
Vandalism	15	5.01	497.2
Drugs	18	1.79	1549.2

SOURCES: FBI Uniform Crime Reports, 1973; Census Estimates; Franklin E. Zimring, *Confronting Youth Crime: Report of the Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders*, background paper, Twentieth Century Fund, Holmes & Meier Inc., New York, 1978, p. 36.

The principal problems with accepting these figures as indicators of actual offense rates are the wide range of behaviors encompassed under each specific offense type and the strong possibility that youths are being arrested for less serious behavior than adults. For instance, we know that youths are more likely than adults to commit burglary or robbery in groups rather than alone.[3] We also know that juveniles tend to be less lethally armed and to pose less of a death threat than older robbers.[4]

We can begin to see the effects of controlling on offense seriousness in the graph

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robberies were perceived by the victim to involve offenders under 21 years of age. U.S. Department of Justice, *Criminal Victimization Surveys in Washington, D.C.*, A National Crime Survey Report, 1977, Tables 13 and 15.

[3] See data in footnote 2.

[4] See Phillip J. Cook, "A Strategic Choice Analysis of Robbery," in Wesley Skogan (ed.), *Sample Surveys of the Victims of Crime*, Ballinger, Cambridge, Massachusetts, 1976.

in Fig. 2.1, which contrasts the age concentration of arrests for index property offenses (burglary, larceny, auto theft) with the age concentration of arrests for violent crime (murder, rape, robbery, assault). Arrests for property crimes are concentrated earlier in the adolescent years, while arrests for violent crimes peak later.

But even "violent crime" is too heterogeneous a category for analysis purposes. While sensational homicides and rapes are candidates for front-page treatment by the press, 90 percent of all youth arrests for crimes classified by the FBI as violent are for robbery and aggravated assault—a mixture of offenses running from unarmed schoolyard extortions through life-threatening, predatory confrontations.

Figure 2.2 attempts to carry the analysis one step forward by separately considering the inevitably serious offenses of homicide and forcible rape and the more heterogeneous high-volume offenses of violence, using arrest statistics to reflect age-specific patterns of violent criminality. Arrests for homicide and rape are more frequent among 18- and 19-year-olds than among the entire under-18 population, even though youths aged 13 to 17 constitute a substantially higher population at risk. The 18- to 20-year-old group also experiences higher *rates* of arrests for the "heterogeneous" offenses of robbery and aggravated assault, but the *number* of under-18 arrests for these offenses exceeds the absolute number of arrests among 18- to 20-year-olds; and the youth share of total arrests is thus more substantial.[5]

Two important conclusions can be drawn from these data. First, where the offense category is extremely serious, the number of under-18 arrests is small, at least in relative terms. Second, the *bulk of adolescent arrests for crimes of violence*, particularly in the under-18 category, *is in the two classes of police-defined violence where the label of the arrest tells us relatively little about the degree of seriousness of the offense.* For this reason, our ability to draw confident conclusions about the seriousness of youth violence over time or in comparing different areas on the basis of official statistics is quite limited as long as we deal with aggregated totals dominated by heterogeneous offenses.[6]

An analysis of juvenile homicide and assault arrests has shown that the police appear to have been lowering their threshold for making juvenile assault arrests, so that the increase in arrest rates over time may be a function of police behavior rather than juvenile behavior.[7] In fact, some of the recent increases in juvenile arrest rates may be directly attributable to recent efforts to divert minor offenders or status offenders away from the criminal justice agencies. If a police officer finds himself in a position where immediate intervention with a juvenile appears necessary, he may charge the juvenile with a somewhat more serious offense (than an adult would have been charged with under the same circumstances) in order to provide legal grounds for the form of intervention that he feels to be necessary.

Finally, one clear age bias is introduced into arrest statistics by the greater tendency of young offenders to commit crimes in groups and to be arrested in

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[5] While 18- to 20-year-olds had a higher arrest rate, the under-18 population had more total arrests for robbery and aggravated assault in 1975.

[6] Paul A. Strasburg, *Violent Delinquents: A Report to the Ford Foundation from the Vera Institute of Justice*, Monarch, New York, 1978, pp. 4, 5.

[7] Franklin E. Zimring, "American Youth Violence: Issues and Trends," in Norval Morris and Michael Tonry (eds.), *Crime and Justice: An Annual Review of Research*, Vol. 1, University of Chicago Press, 1979.

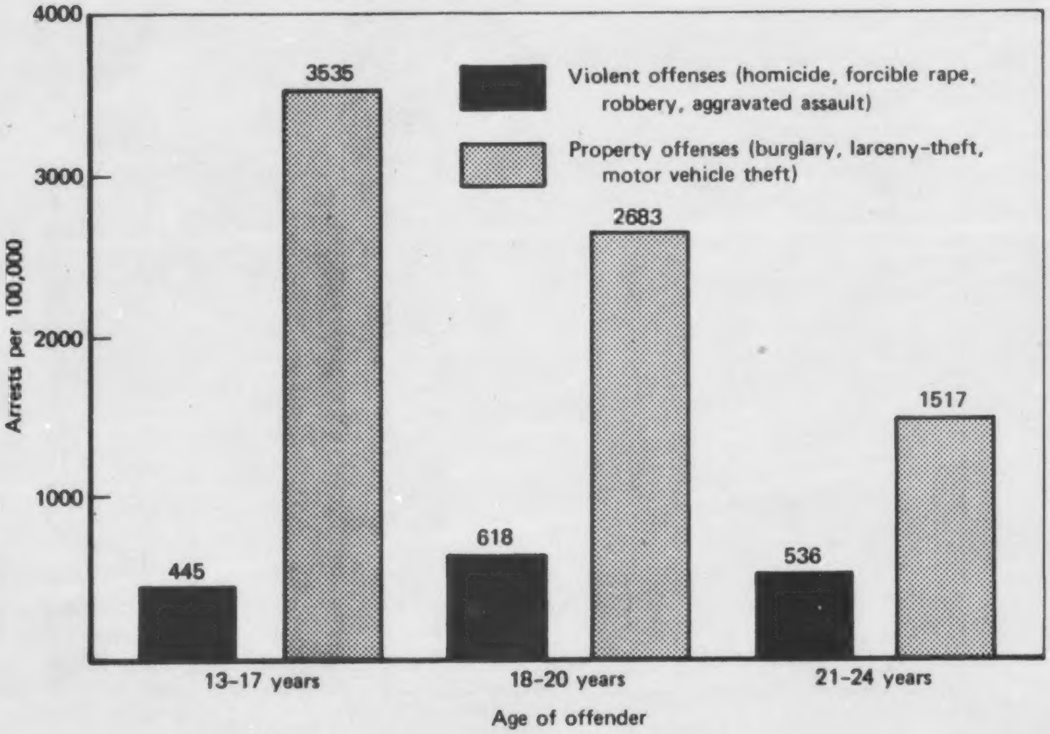

Fig. 2.1—Arrest rates by age for violent and property offenses

Sources: U.S. Department of Justice, Federal Bureau of Investigation, *Uniform Crime Reports, 1975;* U.S. Department of Commerce, Bureau of the Census, *Current Population Reports,* Series P-25, No. 643, January 1977; Franklin E. Zimring. "American Youth Violence: Issues and Trends," in Norval Morris and Michael Tonry (eds.), *Crime and Justice,* Vol. 1, University of Chicago Press, 1979, p. 72.

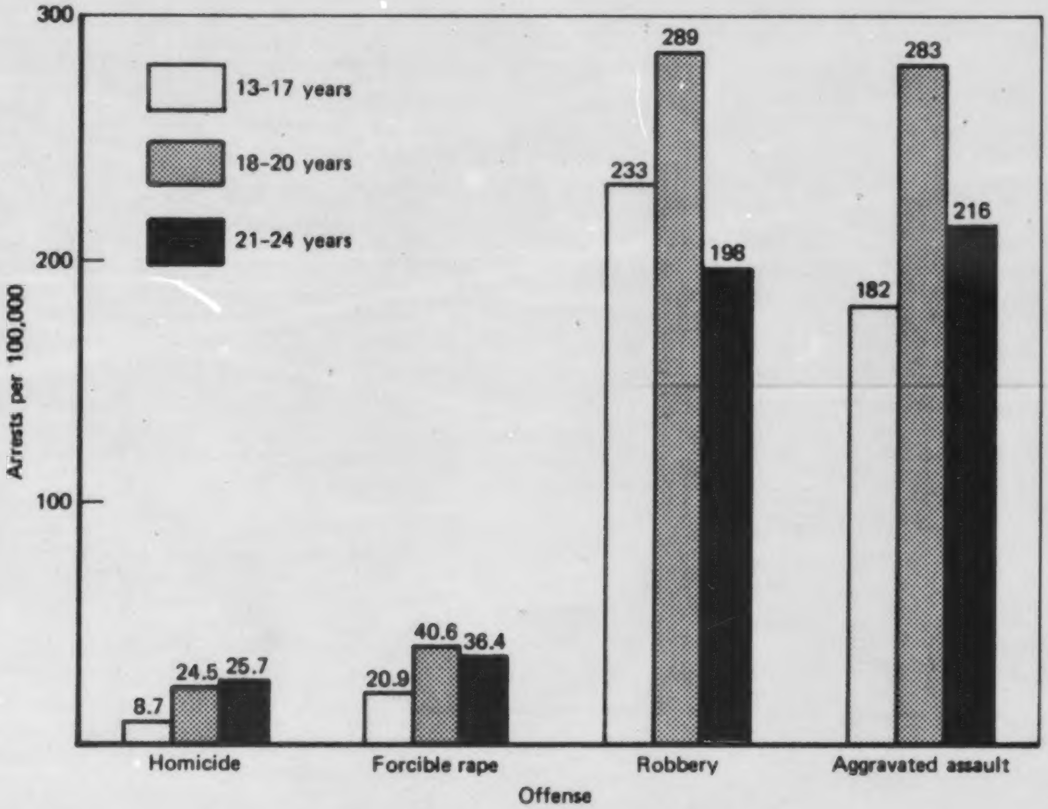

Fig. 2.2—Arrest rates by age for homicide, forcible rape, robbery, and aggravated assault, 1975

Sources: U.S. Department of Justice, Federal Bureau of Investigation, *Uniform Crime Reports, 1975;* U.S. Department of Commerce, Bureau of the Census, *Current Population Reports*, Series P-25, No. 643, January 1977; Paul A. Strasburg, *Violent Delinquents: A Report to the Ford Foundation from the Vera Institute of Justice*, Monarch, New York, 1978, pp. 4, 5.

groups. The victimization data show that two-thirds of all robberies attributable to offenders under 21 years of age were committed in groups, while two-thirds of those attributed to persons over 21 were committed alone. This group tendency, while it does not overestimate the criminality of youth, does overestimate the community risk that is attributable to youth.

All of these qualifications to existing arrest statistics give us reason to discount somewhat the level of youth crime portrayed by age-specific arrest rates. In fact it appears certain that the seriousness of the youth crime problem is overstated by current arrest statistics, although to what degree we cannot be sure.[8]

If we wanted to go beyond current arrest figures to get a better estimate of actual offense rates by age, it would be necessary to make a number of refinements in current data reporting procedures. First, we would have to describe or categorize the criminal behavior for which arrests are made in a much more detailed fashion to allow us to control on the seriousness of each individual's behavior. For violent crimes we would need information on the weapon type; the degree of force, threat, or harm; prior associations between the victim and offender; the number of offenders involved in the crime; and the degree of participation by each individual.[9] For property crimes—in particular, burglary—we would need to know about access to the property, means of entry, time of day, type of premises, and each individual's degree of participation.

A second control that must be introduced in inferring criminal behavior from arrest behavior is the probability of arrest. If arrest probability varies systematically with age, this variation will confound any age/criminality relationship that is determined from arrest figures alone.

INDIVIDUAL OFFENSE RATES

We have looked at age-specific arrest rates which tell us what percentage of an age group is participating in crime. We now look at recent research on the rate at which individual offenders of different ages commit their crimes. Individual offense rates are a critical component in estimating future risk to the community.

One source of our data on the relationship between individual offense rates and

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[8] One might hope that self-report studies of potential young offenders could provide a measure of youth crime, over time, that was independent of police reporting practices. Unfortunately such is not the case. As Frank Zimring (1979, op. cit.) points out, these studies have serious non-response problems and contain almost no data on serious crime. In their attempt to assess criminal behavior for a national sample of adolescents, Martin Gold and David J. Reimer ("Changing Patterns of Delinquent Behavior Among Americans 13 Through 16 Years Old: 1967-1972," *Crime and Delinquency Literature*, Vol. 7, 1975, pp. 483-517) reported that 29 percent of the eligible respondents were not interviewed. Less than 30 black males over the age of 15 were included in the sample, and no serious crimes of violence were listed in the schedule of behavior about which the respondents were asked.

[9] Some information on the relationship between offender age and offense seriousness can be gleaned from Table 2.2. The data come from an ongoing study of robbery cases filed by the Alameda County, California prosecutor from 1976 through 1978. We have data on cases filed against 374 robbery defendants, 91 of whom were between 18 and 20 years of age, while the rest were older. Table 2.2 shows the percentage of cases for each age group in which certain characteristics bearing on offense seriousness were present. With the single exception of the defendants' infliction of great bodily injury, the distribution of all other characteristics suggests that the crimes of the younger defendants were less serious, less sophisticated in terms of criminal intent, and more likely to lead to arrest. There were no age-correlated differences in the defendants' race or sex or in the number of victims or victims' characteristics.

Table 2.2

CHARACTERISTICS OF ROBBERY INCIDENTS FOR YOUNGER AND OLDER ADULTS

	Percentage of Cases in Age Group	
Characteristic	18-20 (n=91)	21 or over (n=283)
Additional defendants arrested for this case	67	47
Firearm involved in crime	48	58
Crime in public location (street, school, public transportation)	45	27
Night time	50	32
Victim is person in charge of money	24	38
Defendant used firearm	32	39
Defendant inflicted great bodily injury	11	3
Additional witnesses	45	31
Value less than $100	67	44

age is the inmate self-reporting studies conducted by The Rand Corporation for their Criminal Career Project.[10] The data base for this study consists of self-reports of the number of times each inmate in the study committed any of the eleven listed crime types during the three years prior to his incarceration. Responses to a group-administered questionnaire were obtained from 624 male California inmates.

A cross-sectional analysis of these data, comparing inmates of different ages, revealed that all other factors being equal, individual offense rates appeared to decline with age. There was no observable decline in frequency with age for any single offense type when only the offenders who were active in that offense type were analyzed. Rather, the observed decline in total offense rate appeared to be the result of older offenders participating in fewer different types of crime.

Other evidence on age-dependent crime rates comes from analyses conducted by Alfred Blumstein and his colleagues at Carnegie-Mellon.[11] Blumstein analyzed the individual arrest histories of 5338 offenders from Washington, D.C., to determine the frequency and pattern of their arrests over time. Without controlling for cohort effects, Blumstein's data showed that arrest rates for active offenders declined with age. However, when the data were controlled for cohort effects, arrest rates were trendless with age for most offense categories and increased with age for a few. The fact that Blumstein attributes the decrease in arrest rates with age, observed in his sample, to a cohort effect does not alter the fact that young adults coming before the court, on the average, pose a greater risk to the community than their older brethren.

These two lines of research, both of which are continuing with more refined designs, lead to similar conclusions about the relationship of age and crime for active offenders. But both have their flaws. The Rand study relies on a sample of offenders who were confined in California prisons. But a commitment to state prison is an unusual sentence for a young adult. As Table 2.3 shows, the majority of convicted defendants under 21 who are sentenced to any state time are committed to the California Youth Authority (CYA) rather than to prison. Therefore, the young adult population in California prisons is heavily biased toward the more serious offenders who do not qualify for a CYA commitment. This bias could easily lead to the age/offense rate relationships found in the Rand studies.[12]

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[10] See Mark A. Peterson and Harriet B. Braiker, *Doing Crime: A Survey of California Prison Inmates*, The Rand Corporation, R-2200-DOJ, April 1980.

[11] Alfred Blumstein and Jacqueline Cohen, "Estimation of Individual Crime Rates from Arrest Records," *Journal of Criminal Law and Criminology*, Vol. 70, No. 4, 1979.

Blumstein's data are confounded by the fact that his arrest rates are the joint product of each offender's offense rate and his probability of arrest. The observed decline in arrest rates with age could be the result of declining offense rates, probability of arrest, or both.

Since neither of these studies provides conclusive results, the relationship between age and offense rates for active offenders must remain an open question.

Table 2.3

SENTENCES FOR CONVICTED ADULT MALE DEFENDANTS ARRESTED FOR ROBBERY, ASSAULT, BURGLARY, OR AUTO THEFT, LOS ANGELES COUNTY, 1977

Age of Defendant	Percentage of Those Convicted Who Were Sentenced to . . . Probation	CYA	Prison
Under 21 (n = 3918)	86	10	4
21-29 (n = 5447)	86	1	13
Over 29 (n = 2785)	86	--	14

SOURCE: Offender Based Transaction System (OBTS). Data tape prepared by the California Bureau of Criminal Statistics (BCS).

CONCLUSIONS

We conclude that for policy purposes the relationship between age and crime is mixed. At the most aggregate level, including all index crimes, youths from 16 to 21 are disproportionately overrepresented in arrests. However, as soon as we begin restricting our attention to more serious offenses (homicide or rape) or serious offenders (individual armed predators), we find that the proportion of youths involved drops substantially. To sort out which types of offenses are predominantly youth crimes, and thus possibly responsive to youth-related sentencing policies, we need to know more about the relative severity of offenses attributed to different age groups.

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[12] Of course, the Rand age effects include the cohort effects that Blumstein eliminated, and so the two studies are not inconsistent.

III. AGE AND SANCTIONS

The two-track system means that the heaviest punishment will fall on offenders at or near the end of their careers.

* * *

We know enough to believe that some substantial inequities exist and that there may be many offenders who, as young adults (say, aged 18 to 22), get a "free ride" because their juvenile record is ignored.

—Barbara Boland and James Q. Wilson, "Age, Crime, and Punishment," *The Public Interest*, No. 51, Spring 1978.

One element of the current "youth crime" debate has to do with whether youths are punished disproportionately more leniently than older offenders, particularly during their early years in the adult criminal system. We begin by reviewing the available evidence on youth leniency at the time this study began. This evidence includes the age distribution of adults in prison; conviction and incarceration rates by age for defendants in Washington, D.C., in 1974; disposition severity by age for several North Carolina counties; and longitudinal data on disposition severity for 49 career criminals.

Next we present new data on the relationship between disposition severity and age for three jurisdictions: Los Angeles County, New York City, and Franklin County, Ohio. The Los Angeles and Ohio data include both juveniles and adults, while the New York City adult felony data include offenders down to 16 years of age.

We use these data to show that there is no single national policy on youth sentencing. The jurisdictions examined vary in several important ways. We could not come to firm conclusions regarding the causes of these policy variations, due to the limited number of sites in our study, but the variations do not appear to be adequately explained by formal legal or procedural differences.

LENIENCY FOR THE YOUNG ADULT: THE AVAILABLE EVIDENCE

Just as critical examination of the dual system of justice is a relatively recent phenomenon, sustained empirical efforts to study the relationship between age and sentencing policy in criminal courts are of recent origin. Available data are imprecise and clearly insufficient for generalizations about nationwide policy, trends over time, or the size of the break that the average "young adult" receives in American criminal courts. Prior to this study, existing data on the relationship between age and punishment relied on either comparisons of aggregate arrest and imprisonment data by age, or cross-tabulations by age that were a by-product from investigations of other determinants of punishment policy.

The most dramatic evidence of apparent leniency for young offenders came from the crudest data. In their recent article in *The Public Interest,* Barbara Boland and James Q. Wilson argue that leniency toward young adult offenders can be directly inferred from the fact that felony arrests are concentrated in the young adult years while the average age at imprisonment is 28. In fact, according to the soon-to-be-released LEAA report to Congress on U.S. prison populations, 39 percent of the inmate population in state facilities are between 18 and 24 years old, and 40 percent of all inmates of local correctional facilities fall within these age limits.[1] Since inmates can hardly be expected to become younger as they serve time in prison, comparable figures for age at admission would show an even higher concentration in the young adult years. Moreover, the LEAA studies found that 18- to 24-year-olds have been a growing proportion of state prison populations even as the total prison population has increased dramatically. There are, in short, plenty of young adult offenders in prison.

A more specific if still unsatisfactory use of aggregate data is demonstrated in Figs. 3.1 and 3.2, which compare the distribution of arrests by age with the distribution of state prison population by age for larceny and robbery in 1972. As the figures show, arrests steadily declined as a function of age while rates of incarceration steadily rose. Using national aggregate data on both arrest and incarceration, "the ratio of robbery prison admissions to arrests for 23-year-olds is 2½ times as high as that for age 19."

The problems with such aggregate comparisons are manifold. Classifications such as "robbery" and "larceny" encompass a wide variety of events that range in seriousness from trivial to substantial. As we demonstrated in Chapter II, trivial offenses are more concentrated in the younger years, and younger offenders are more frequently arrested in groups. Since penal policy is generally more favorable to the accessories than to the principals, we would expect a lower average sentence for younger offender groups. The importance of this last consideration can best be underscored by a study of juvenile homicide in Philadelphia—on the average, three juveniles were arrested for every homicide event attributed to juvenile offenders.[3]

Two further problems with these "X curves" deserve mention. First, no controls for prior criminal record are included, even though prior record should dominate prison decisions in larceny and play an important role in robbery (most younger offenders have fewer prior convictions). Second, this "national picture" assumes there is a unitary national policy to report.

Some information on the relationship between age and punishment in specific jurisdictional settings has been generated from case samples collected for other purposes. Two of three "spinoff" studies of individual jurisdictions discussed below show more modest leniency effects than the aggregate national statistics would suggest. The third study shows less severe punishment in the early adult years of one group of offenders, but it involves a sample of offenders chosen retrospectively that does not represent the general offender population.

Table 3.1, reproduced from the recent 20th Century Fund Task Force Report,[4] shows the disposition of persons accused of robbery and burglary by charge and age at arrest in Washington, D.C., for 1974.

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[1] Bradford Smith, ABT Associates, 1979 (draft report).

[2] Franklin E. Zimring, *Dealing with Youth Crime: National Needs and Federal Priorities,* a policy paper for the Federal Coordinating Council on Juvenile Justice and Delinquency Prevention, 1975.

[3] Joel Eigen, "The Borderlands of Juvenile Justice: The Waiver Process in Philadelphia," Ph.D. dissertation, University of Pennsylvania, 1977.

[4] Franklin E. Zimring, *Confronting Youth Crime: Report of the Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders,* background paper, 1978.

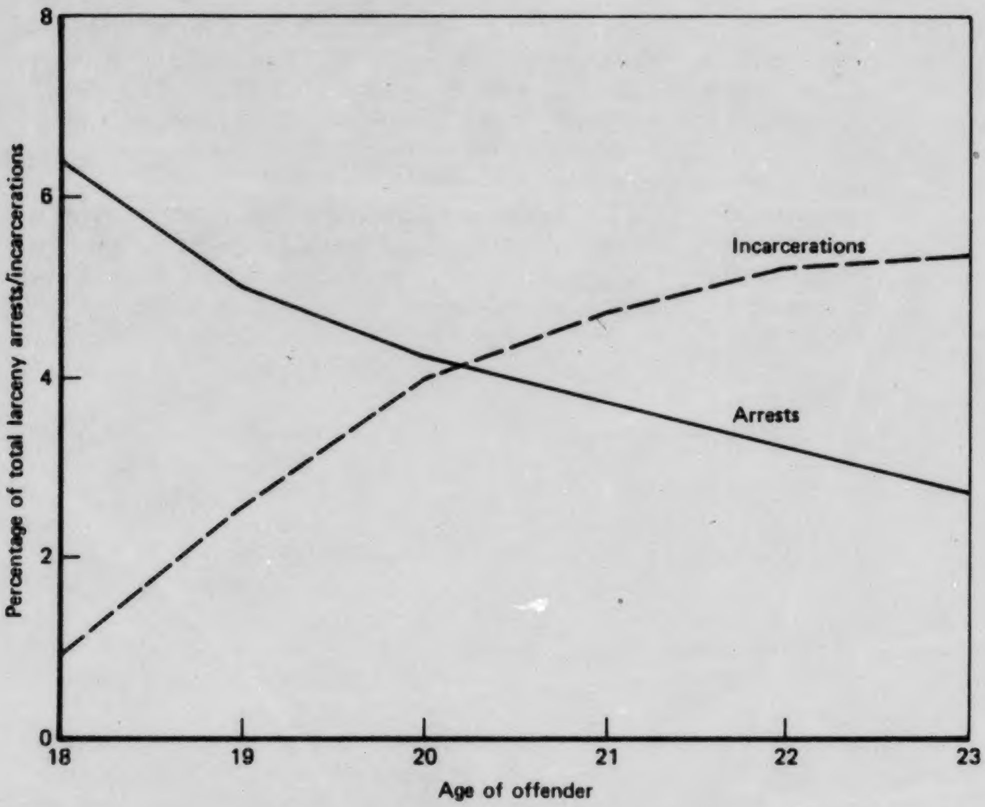

Fig. 3.1—Percentages of total arrests and incarcerations for larceny by age, 1972

Source: Franklin E. Zimring, *Dealing with Youth Crime: National Needs and Federal Priorities*, a policy paper for the Federal Coordinating Council on Juvenile Justice and Delinquency Prevention, 1975.

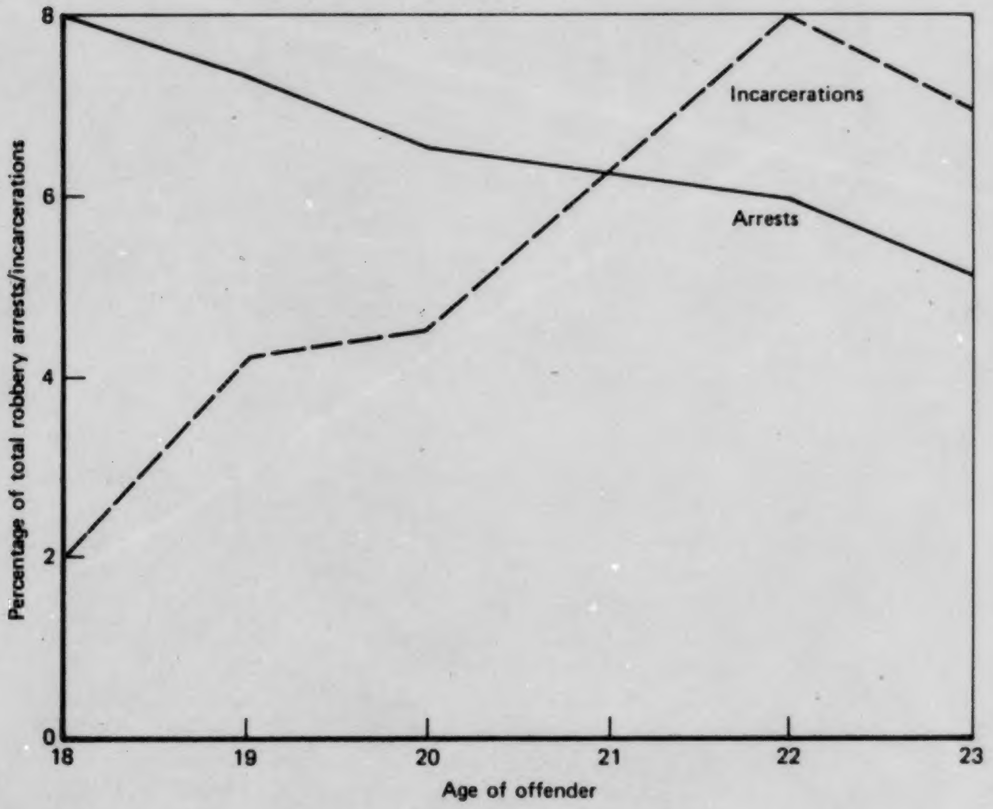

Fig. 3.2—Percentages of total arrests and incarcerations for robbery by age, 1972

Source: Franklin E. Zimring, ***Dealing with Youth Crime: National Needs and Federal Priorities,*** a policy paper for the Federal Coordinating Council on Juvenile Justice and Delinquency Prevention, 1975.

Table 3.1

DISPOSITION OF PERSONS ACCUSED OF ROBBERY AND BURGLARY BY AGE AT ARREST, WASHINGTON, D.C., 1974

	Convicted (percent of total arrests)		Serving Time (percent of total convicted)	
Age at Arrest	Armed Robbery (n=969)	Burglary (n=1472)	Armed Robbery (n=196)	Burglary (n=625)
18	33	48	55	35
19	27	49	58	49
20	28	43	79	45
21	33	21	89	49
22	28	45	79	44
23	34	46	61	47
24	27	36	68	59
25+	30	41	67	49
All ages	30.5	42.5	66	49

SOURCE: Zimring, *Confronting Youth Crime* (1978), op. cit., p. 61.

The jurisdictional boundary between juvenile and criminal court in the District of Columbia is the 18th birthday. Table 3.1 shows that in 1974 the youngest age group in this sample, 18-year-olds, were treated more leniently than older offenders convicted of the same offenses. In that year, the total sample of convicted burglars had a one in two probability of a prison sentence, while the 18-year-old sample was incarcerated one time out of three. For armed robbery, a considerably less homogeneous offense than the general "robbery" category, less than a third of the convicted defendants over 20 escaped imprisonment while almost half of the 18-year-olds avoided post-conviction custodial sentences. Washington, D.C. PROMIS data[5] also support the proposition that when younger offenders are sentenced to prison, their sentences are somewhat shorter than those of older offenders, and that the more serious the offense, the greater the difference between sentence length for younger and older adult offenders. These tables cover only two offenses in one jurisdiction. The cross-tabulation by age and offense does not control for prior criminal record as an independent determinant of the type of sentence or the length of sentence and thus would tend to overstate differences attributable to age alone. Yet the District of Columbia data are far more specific than the aggregate national totals, and the degree of leniency associated with offender age is far less than the national aggregate comparisons would suggest.

A second "spinoff" opportunity to study age and crime comes from an analysis by Stevens Clarke and Gary Koch of a sample of cases processed in two North Carolina counties.[6] The primary interest of the study was the effect of race and class on disposition. Juvenile records were not available to the researchers, and prior juvenile record was apparently not included in their "prior record" variable.[7] With respect to the relationship between age and conditional probability of imprisonment, no significant "age-break" was found when controls for prior records were induced first. The Clarke and Koch study is superior to the data from the District of Columbia in that far more detailed information was available about offense characteristics, and controls were available on the extent of prior adult criminal record. The findings should be qualified to the extent that the power of a prior record to predict leniency or severity may stem from the relationship between age and prior record. Moreover, the system studied has a much higher offense-specific propensity to incarcerate than most northern industrial jurisdictions. Even if the finding holds for the counties that were studied, it cannot be easily generalized.

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[5] Zimring, *Confronting Youth Crime*, p. 62.

[6] "Influence of Income and Other Factors on Whether Criminal Defendants Go to Prison," *Law and Society Review*, Vol. II, No. 1, 1976, p. 57.

While it may appear that youth is not an effective shield in North Carolina, a glance at the Rand habitual offender record histories[8] suggests that youth powerfully mitigates punishment levels for individuals in the formative years of their careers as habitual offenders. As a matter of fact, the chances of escaping imprisonment and sentence lengths were actually smaller for this sample of pre-screened recurrent criminals during their early years in the criminal justice system. However, since the group was selected on the basis of repetitive recidivism and current incarceration, it is not possible to disentangle the effects of (a) current bad luck, (b) severity of prior criminal record, and (c) age in considering the severity of the system response to these individuals at various different points in their development.

Our conclusion from this survey of earlier studies is that the impact of age on punishment decisions is largely uncharted territory, and that the available evidence suggests both considerable cross-site variation and shifts in policy over time. To determine the existence, magnitude, and generality of different sentencing patterns for young offenders in criminal court, let alone the reasons for different treatment, it is necessary to examine much more closely the relationship between age and sanction, in a number of jurisdictions.

In the remainder of this chapter we report on new analyses of age-sanction relationships using data constructed for other research purposes or for routine case monitoring functions.

LOS ANGELES COUNTY ADULTS

Our best source of data for exploring age effects on sanctions comes from Los Angeles County. Adult felony arrest dispositions are contained in the statewide OBTS (Offender Based Transaction System). Juvenile arrests that are serious enough to be referred to probation are covered more sketchily in the probation department's JTR (Juvenile Transaction Report) System.[9] For this analysis, we used only cases involving males arrested for selected offense categories that were contained on the 1977 OBTS and JTR tapes.

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[7] Memorandum from Stevens Clarke, March 1979.

[8] Joan Petersilia, Peter W. Greenwood, and Marvin Lavin, *Criminal Careers of Habitual Felons*, National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, Washington, D.C., July 1978.

Table 3.2 summarizes the pattern of male adult felony dispositions in Los Angeles County by age, showing the percentage of all arrestees in each age group who fall into the three increasingly severe disposition categories—convicted, incarcerated, and incarcerated in state institutions.

Table 3.2

DISPOSITION OF ADULT FELONY ARRESTS BY AGE GROUP, LOS ANGELES COUNTY[a]

	Disposition (percent of total arrests)			
Age Group	Convicted	Incarcerated	State Time[b]	n
18	56	37	7	2415
19	52	37	8	2674
20	51	37	7	2325
21	48	35	6	1981
22-23	51	38	7	3280
24-25	50	37	7	2402
26-29	48	36	7	3326
30-39	48	34	7	3765
40+	46	29	5	2186

[a] Robbery, assault, burglary, and auto theft only.

[b] CYA or prison.

From Table 3.2 we see that conviction rates do not increase with age—if anything, they decline slightly. Incarceration rates also do not appear to increase with age: 18- and 19-year-olds are incarcerated at least as frequently as any other age group, and adults over 40 are incarcerated less frequently than others. The percentage of arrestees committed to state time in CYA or prison is also remarkably constant with age.

A more detailed breakdown of the disposition categories shows that the slightly higher conviction rate for younger defendants is due to a lower than average dismissal/acquittal rate, not to a lower than average *police release* rate or *prosecutor rejection* rate. In this sample, the average percentage of arrestees who either have their cases dismissed or are acquitted is 13 percent. Eighteen-year-olds have the lowest rate (10 percent), while over-forties have the highest (17 percent).

The principal trend observed in a more detailed breakdown of disposition categories is the shift in the nature of state time served by offenders from 18 to 21 years of age. Eighty-seven percent of the 18-year-olds sentenced to state facilities received commitments to the CYA.[10] At 19, this percentage was down to 74 percent and at 20 it was 62 percent.

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[9] The JTR tape provides very limited data on each case and totals from other sources. None of the existing juvenile record systems in Los Angeles County are cross-checked or reconciled with each other.

[10] In California, the CYA is a sentence option for most offenses if the offender was under 21 years of age at the time of arrest (Sec. 1731.4 W.I.C.).

Table 3.3 contains figures on the average length of stay in state prison, under the new determinate sentencing law, and in CYA, for selected offense categories. Since there is only a slight increase in average length of stay with age,[11] the figures in Table 3.3 are representative of the time an 18- to 21-year-old defendant would serve. The average length of stay in CYA is only about one-third that of the mean term in prison. Thus defendants sentenced to CYA in lieu of prison are clearly getting a break. Furthermore, the young adults sentenced to CYA appear to be assured by a recent appellate decision[12] that under their indeterminate CYA term, they will serve no longer than if they had received a determinate term to state prison.

Table 3.3

AVERAGE LENGTH OF STAY IN PRISON AND CYA FOR SELECTED OFFENSES, LOS ANGELES COUNTY

Offense Category	Mean Determinate Prison Term[a] (months)	Mean Length of Stay in CYA[b] (months)
Homicide	90[c]	28
Robbery	54	13
Burglary	28[d]	9

[a] From Albert J. Lipson and Mark A. Peterson, *California Justice Under Determinate Sentencing: A Review and Agenda for Research*, The Rand Corporation, R-2497-CRB, June 1980.

[b] From table provided by CYA for 1978 releases.

[c] Murder 2nd degree.

[d] Burglary 2nd degree only; burglary 1st degree is 47 months.

When we look at the pattern of dispositions by age for each offense type individually, we see that it is roughly comparable to that of the aggregate data. But some slight differences are worth noting. For robbery (Table 3.4) the average conviction rate across all age groups is lower (45 percent of arrests compared to 50 percent for all four offenses combined) than for the other offense types. There is also a much larger drop in the conviction rate for the over-forties than is evident from the aggregate data.[13]

For assaults (Table 3.5) the probability of receiving state time is much less than the average (2 percent of the total arrests compared to 7 percent for all four offenses

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[11] Data provided by CYA.

[12] In *People v. Olivas* (1976), 17 Cal. 3d 326, the California Supreme Court held that misdemeanants between the ages of 16 and 21 could not be held in CYA longer than the 1-year maximum term they could have received if they had been sentenced to jail.

[13] The decline in robbery conviction rates with age is significant (X^2) at the .005 level. The decline in robbery incarceration rates is significant at the .10 level.

Table 3.4

DISPOSITION OF ADULT ROBBERY ARRESTS BY AGE GROUP, LOS ANGELES COUNTY

Age Group	Disposition (percent of total arrests)			n
	Convicted	Incarcerated	State Time	
18	49.6	40.6	17.8	400
19	49.1	42.1	17.1	511
20	43.6	39.6	16.3	424
21	42.4	38.6	16.6	369
22-23	48.8	41.4	17.6	665
24-25	48.4	42.5	19.2	506
26-29	42.2	37.6	19.3	649
30-39	43.1	36.6	18.1	674
40+	36.9	31.2	14.5	263

Table 3.5

DISPOSITION OF ADULT ASSAULT ARRESTS BY AGE GROUP, LOS ANGELES COUNTY

Age Group	Disposition (percent of total arrests)			n
	Convicted	Incarcerated	State Time	
18	50.4	27.1	2.7	450
19	45.7	24.5	3.5	542
20	51.2	29.1	1.7	530
21	46.5	26.0	2.2	492
22-23	50.3	29.5	1.7	902
24-25	49.5	28.1	1.7	639
26-29	46.0	25.7	1.8	1055
30-39	44.0	23.5	2.1	1407
40+	42.5	20.2	1.4	1105

combined) while the higher probability of receiving state time, for 18- and 19-year-olds, is much more pronounced.[14]

Burglary is the only offense in which older men have a higher probability of conviction (Table 3.6). The decline in conviction rates with age that we saw for other crimes is not evident here. The percentage incarcerated increases with age as does the percentage sentenced to state time[15]: the over-thirties have the highest incarceration rate and highest state time rate—possibly the effect of having built up very long rap sheets and participating in more serious or sophisticated crimes.

In auto theft (Table 3.7) the aggregate trends are more pronounced. There are

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[14] Declines in the assault conviction and incarceration rate are significant (χ^2) at the .005 and .001 levels, respectively. The decline in state time is not significant.

[15] Significant at the .05 and .005 levels, respectively.

Table 3.6

Disposition of Adult Burglary Arrests by Age Group, Los Angeles County

Age Group	Disposition (percent of total arrests)			n
	Convicted	Incarcerated	State Time	
18	60.7	40.4	6.1	1201
19	58.6	40.0	6.6	1166
20	56.8	41.9	6.7	1002
21	54.4	39.2	4.5	804
22-23	57.6	43.5	5.9	1271
24-25	55.3	41.8	5.8	954
26-29	57.2	44.8	7.2	1247
30-39	57.1	45.0	9.0	1318
40+	59.0	45.1	7.4	626

Table 3.7

Disposition of Adult Auto Theft Arrests by Age Group, Los Angeles County

Age Group	Disposition (percent of total arrests)			n
	Convicted	Incarcerated	State Time	
18	51.6	36.8	3.0	364
19	47.4	37.7	6.1	455
20	41.6	32.9	2.5	369
21	42.0	33.5	3.8	316
22-23	38.0	31.0	2.0	442
24-25	37.6	30.7	1.7	303
26-29	37.3	31.7	2.4	375
30-39	34.4	28.1	2.7	366
40+	32.9	24.0	1.6	192

greater declines in conviction rates, incarceration rates, and state commitments with age.[16] Young adults are hit particularly hard.

Unfortunately, the OBTS records do not indicate the prior juvenile record of the defendants so we cannot explore its effects. However, OBTS does contain the prior status (whether on bail, parole, probation or any other form of conditional release) for all those cases that reach the Superior Court—about one-quarter of the arrests.

Table 3.8 shows the probability of dismissal or acquittal by age and prior status for Superior Court cases. There is a clear trend of increasing dismissal/acquittal

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[16] Significant at the .001, .05, and .01 levels, respectively.

Table 3.8

PROBABILITY OF DISMISSAL OR ACQUITTAL AS A FUNCTION OF AGE AND PRIOR STATUS FOR SUPERIOR COURT CASES, LOS ANGELES COUNTY

Age Group	No Prior Status	Status[a]
18	9.1	12.0
19	12.4	7.7
20	10.3	13.3
21	14.4	12.7
22-23	14.6	12.0
24-25	11.4	12.1
26-29	15.8	9.6
30-39	15.4	12.0
40+	26.6	14.7

[a] Includes parole, probation, and any form of conditional release.

rates with age for defendants with no prior status, and no trend for those with prior status. Status by itself has little effect on conviction rate.

Table 3.9 shows the probability of receiving a state commitment (CYA or prison) as a function of age and prior status. Prior status clearly increases the chance of commitment at any age, and commitment rates decline with age, regardless of status.

The more pronounced decline in state level incarceration with age, as compared to the figures in Table 3.1, is probably due to a smaller base (only Superior Court cases as opposed to all arrests) and the fact that a slightly lower proportion of young adult cases make it to Superior Court.

A relatively high incarceration rate for young adults in California with no prior status, in comparison to older California offenders, may result because juvenile records are not included in the status coding.[17] In summary, recent data from Los Angeles County do not indicate that young adults are consistently treated more leniently than other offenders; in fact, on several mearures—conviction and incarceration rates—they do worse. Only on average length of stay do they do better. For burglary arrestees, we find a pattern of incarceration rates increasing slightly with age, which may be either a prior record or offense seriousness effect. In the other three offense categories examined—robbery, assault, and auto theft—young adults consistently have higher conviction rates and are more likely to be incarcerated. This is somewhat surprising given the consistency with which other research has found a positive relationship between prior record and sanction severity.

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[17] Percentage of defendants with no prior status: age 18—78%; age 19—62%; age 20—54%; and age 21—50%.

Table 3.9

PROBABILITY OF STATE COMMITMENT[a] AS A FUNCTION OF AGE AND PRIOR STATUS FOR SUPERIOR COURT CASES, LOS ANGELES COUNTY

			Arrests Disposed of in Superior Court	
Age Group	No Prior Status	Status	n	Percent of Total Arrests
18	31.3	40.8	477	20
19	25.3	46.4	623	23
20	22.7	35.7	532	23
21	14.0	36.3	455	23
22-23	16.4	33.3	826	25
24-25	19.2	32.5	615	26
26-29	20.4	35.3	817	25
30-39	16.8	41.4	864	23
40+	17.7	29.5	420	19

[a] CYA or state prison.

LOS ANGELES COUNTY JUVENILES

To determine the potential change in sanction severity faced by offenders as they reach their 18th birthday and pass from the jurisdiction of the juvenile to the criminal court we would like some means of estimating disposition patterns for juveniles that is comparable to what OBTS provides for adults. Specifically, we would like a data system that indicates for each juvenile arrest the eventual disposition of the juvenile. Unfortunately, for this study no such system was available to trace through the samples we required.[18]

The best source of data on juvenile offenders is the probation department or the juvenile court. Both maintain record systems that allow them to monitor the flow of their workload and determine the status of individual cases. However, neither is in a position to furnish information on arrest dispositions. First, neither one begins tracking a case until it has become part of its workload, which leaves out all cases that fall out early in the process. Second, neither agency cares about the disposition of specific arrest charges. The probation department cares mainly about the status of the delinquent, whether at home on probation, released pending a hearing, or committed to some facility. For any juvenile involved in a number of arrests—and many of the serious offenders are—it becomes impossible to sort out what charge led to a specific placement status. The juvenile court is concerned only with its own activities: the number of hearings held, the number of juveniles committed to state institutions, etc. It does not keep data organized by arrest charge (presumably because it is interested in the welfare of the juveniles and does not see itself as a sanctioning agency) nor does it make any attempt to monitor the severity of dispositions.

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[18] It would appear that the Los Angeles County Probation Department's newly installed Juvenile Automated Index (JAI) will provide this capability for future studies.

To determine whether juvenile disposition patterns are in any way comparable to those for adults, we used police and probation department records to trace through the processing of approximately 100 male juvenile residential burglary arrests and 100 armed robbery arrests.[19] We selected these two arrest charges to provide a range of seriousness and to ensure that the estimated sanction patterns would not be deflated, in comparison to the adult cases, by the inclusion of trivial offenses.

Difference Between Juvenile and Criminal Law

This is not the place to write a treatise on juvenile law and its relation to criminal law. Although the terminology and the intentions of the law may differ somewhat, juvenile law and criminal law are basically similar in the way criminal (as opposed to status) offenses are processed. However, for the purposes of this analysis, five main points should be acknowledged:

1. As a matter of policy, the police are expected to exercise much broader discretion in handling juveniles. This policy stems from the belief that in many instances the best way to handle an incident is to counsel and release or divert the juvenile, rather than to involve him in the stigma of court proceedings.

2. The police, if they wish to press charges, do not take a juvenile case directly to the prosecutor, as they do with an adult. Instead, they request probation to seek a petition, which in turn conducts its own investigation of the matter prior to requesting a petition from the prosecutor. This additional administrative screening provides an opportunity, not available to adults, to have the case terminated without any formal evaluation of the evidence.

3. All that is necessary for the juvenile court to adjudge a minor to be a ward of the court is a finding that the juvenile "violated any law of this state or of the United States or any ordinance of any city or any county of this state defining crime or who, fails to obey any lawful order of the juvenile court."[20] Therefore, the juvenile court has a wider latitude to assert its wardship than does the criminal court, which must find a defendant to be guilty of specific acts alleged by the prosecutor, or a lesser included offense.[21]

4. Even though the burden of proof for serious juveniles is the same as for criminal defendants, juveniles, as yet, have no right to a jury trial.

5. In disposing of cases, a juvenile court judge is supposed to use different criteria than those used by a judge in the criminal court; namely, to have a greater concern for the welfare of the juvenile and to put less emphasis on punishment or community protection.

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[19] In drawing our sample we examined 253 burglary arrests to find 101 residential burglaries and 235 armed robbery arrests to find 103 armed robberies. Most of the nonresidential burglaries involved schools or automobiles.

[20] Sec. 602 W.I.C.

[21] Thus the juvenile court adjudication records tell us less about what the delinquent youth actually did than does the criminal court record for an adult charged with a comparable offense.

Juvenile and Adult Dispositions Compared

The basic pattern of dispositions for juvenile burglary and robbery arrests, and the contrasting pattern for 18-year-old adults, is shown in Table 3.10. Before we attempt to interpret these data, several caveats must be raised. First, the definitions of the arrest charges for our juvenile and adult samples are not directly comparable; the juvenile charges are potentially more serious. The adult sample includes 18-year-old males arrested for any burglary or robbery charge. The juvenile sample is restricted to males arrested for residential burglary or armed robbery. In California, anyone entering any structure, including dwellings, warehouses, tents, vehicles, stables, etc., with the intent to commit grand or petty larceny or any felony is guilty of burglary.[22] As a matter of policy, residential burglaries are treated more seriously than burglaries of vehicles, trailers, or outbuildings.

Robbery includes both armed and unarmed offenses. In an earlier study of robbery prosecutions in Los Angeles County,[23] we found that about one-third (37 percent) of the adult robbery cases filed by the prosecutor involved no weapon.[24] We also found a strong relationship between arming and the disposition of the case. Only 64 percent of the unarmed cases filed resulted in conviction compared to 82 percent of the armed cases. Of those defendants convicted, about the same proportion of armed and unarmed defendants were incarcerated (88 percent of unarmed robbers and 90 percent of armed robbers). But the rate of state commitments (prison or CYA) was much higher for those who were armed; 54 percent of those convicted as opposed to only 5 percent of convicted unarmed robbers. Therefore, on the average, the sample of juvenile cases we selected is restricted to the more serious forms of robbery and burglary known to lead to more severe sentences in the adult court.[25]

The second possible source of error in Table 3.10 stems from whatever bias is introduced in the juvenile sample by our inability to track all of the juvenile arrests. Our sampling procedure involved selecting male burglary and robbery arrests from the police arrest logs, using a random number table. We then attempted to examine the police report of the sampled arrest to determine whether the arrest was an armed robbery or residential burglary. If it was neither, the case was dropped and we went on to the next candidate. If it was an armed robbery or residential burglary, we attempted to trace through the disposition. From the arrest log sample we were unable to trace 78 burglary cases and 73 robbery cases because we could not find a record of the sample arrest or could not locate the police folder or the report on the specific arrest. These may have been cases that the police dropped, again biasing the sample toward more severe dispositions. Of the cases we traced to the probation department, we could not determine the disposition on 9 burglaries and 10 robberies, about 10 percent of the sample. Our indication is that most[26] of these juveniles are still in the system, some at CYA or on CYA parole. If this is the

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[22] Sec. 459 P.C.

[23] This analysis was based on a random sample of 100 robbery cases filed in 1975.

[24] Thirty-seven percent involved firearms and 26 percent involved other weapons.

[25] However, we also know that offense seriousness increases with age. Since the characteristics of the adult cases are not provided, we do not know whether the juvenile cases are still systematically less serious than the adult crimes, even with our restrictive crime type definition.

[26] The juveniles in eight of nine burglaries and seven of ten robberies.

Table 3.10

COMPARISON OF DISPOSITIONS OF JUVENILE AND ADULT ARRESTS IN LOS ANGELES COUNTY FOR BURGLARY AND ROBBERY

	Disposition (percent of total arrests)					Type of Incarceration (percent of total arrests)	
Offense	Released by Police	Rejected, Dismissed, or Acquitted	Convicted and Released	Convicted and Incarcerated	Total	Local	State
Juvenile burglary (residential)							
n = 92[a]	27	22	38	13	100	9	4
n = 101[b]	25	20	35	21	100	8	13
Adult burglary[c]							
n = 1201	17	22	20	41	100	35	6
Juvenile robbery (armed)							
n = 93[a]	7	33	30	30	100	14	16
n = 103[b]	6	30	27	37	100	13	24
Adult robbery[c]							
n = 400	22	29	9	40	100	23	17

[a] Excluding missing cases.

[b] Counting missing cases as committed to CYA.

[c] 18-year-olds.

case, dropping them from the analysis would bias the juvenile dispositions downward in severity. However, counting them as incarcerated, when they may not be or when they may be incarcerated for some other offense, would bias it upward. For that reason, we show a range of percentages for the juvenile cases, determined by excluding these cases and then counting them all as if they were sentenced to CYA.

Table 3.10 displays the estimated disposition patterns for juvenile residential burglary arrests, burglary arrests of 18-year-olds, juvenile armed robbery arrests, and robbery arrests involving 18-year-olds.[27] The numbers in the table are the percentage of all arrests for that age group and crime resulting in the indicated disposition. The first disposition (police release) occurs when the police do not refer the case to probation for further action after the arrest. It may involve counsel and release, or it may indicate that after further investigation the police no longer believe the individual to be guilty. The second disposition also does not involve a conviction or a finding of delinquency. It represents those instances where probation itself dismisses the case, the prosecutor declines to prosecute (i.e., rejects the probation department request for petition), the court dismisses the case, or there is an acquittal after a hearing or trial. The last two disposition categories in Table 3.10 represent those cases where there is a conviction or finding of delinquency.[28] In the first, the defendant is released on probation and serves no time. In the second, there is some incarceration after trial in jail, camp, CYA, or state prison. Under the convicted and incarcerated category, we have provided a further breakdown indicating the sentences involving local time or commitment to state facilities (CYA or prison), which are typically for much longer terms.

There are four principal observations to be made from Table 3.10. First, the average incarceration rate for all juveniles, under either assumption concerning the disposition of the missing cases, is clearly lower than for adults—possibly much lower. Juveniles are much more likely to be released without confinement after conviction.

However, the juvenile disposition patterns observed do not appear to be constant with age. Older juveniles appear to face a higher likelihood of incarceration. Tables 3.11 and 3.12 display the relevant disposition patterns controlling on age. For both offenses, the severity of disposition, particularly the probability of CYA commitment, increases with age. In fact, older juveniles appear to face about the same probability of commitment to a state facility as do 18-year-olds.[29]

The second point to be made is that if juveniles are incarcerated, they are much more likely to do state, as opposed to local, time. This difference may indicate a greater belief in the state's (as opposed to the county's) ability to rehabilitate

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[27] The figures in Table 3.10 present a very different picture than one would get by attempting to infer juvenile disposition patterns from available data. Using transition probabilities contained in Teilmann's evaluation of A.B. 3121 (K. S. Teilmann and M. W. Klein, *Assessment of the Impact of California's 1977 Juvenile Justice Legislation* (Draft), University of Southern California Social Science Research Institute, 1977), the average conviction rate for all 602 arrests was 17 percent. The specific transition rates were: 53 percent of all 602 arrests were referred to probation; probation requested a petition for 60 percent of the arrests referred to it; the prosecutor filed a petition for 80 percent of the cases in which one was requested; and 68 percent of the petitions filed were sustained.

[28] Or where the juvenile has voluntarily agreed to summary probation in lieu of a hearing.

[29] Some of the increase in sanction severity with age is due to an increase in offense severity with age. Only 23 percent of the under-16 robbers were involved in robberies with guns, while 47 percent of the over-16s were involved in robberies with guns.

Table 3.11

DISPOSITION OF JUVENILE RESIDENTIAL BURGLARY ARRESTS BY AGE, LOS ANGELES COUNTY[a]

Age	Disposition (percent of total arrests)			
	Not Convicted	Convicted and Released	County Camp	CYA
Under 16 (n = 39)	49	44	8	0
Over 16 (n = 53)	49	34	9	8

[a] Cases where disposition was unknown were dropped from the analysis.

Table 3.12

DISPOSITION OF JUVENILE ARMED ROBBERY ARRESTS BY AGE, LOS ANGELES COUNTY[a]

Age	Disposition (percent of total arrests)			
	Not Convicted	Convicted and Released	County Camp	CYA
Under 17 (n = 41)	51	29	12	7
Over 17 (n = 52)	38	23	15	21

[a] Cases where disposition was unknown were dropped from the analysis.

juveniles; it may be a result of local fiscal incentives; or it may reflect a difference in incarceration policy, where only the very worst juveniles are incarcerated, eliminating the group that would receive jail terms if they were adults.

The third point to be made is that the difference between juvenile and adult patterns is more striking for burglary than for robbery. Some of this difference may be accounted for by the fact that the juvenile armed robberies may, on the average, be more severe in comparison to adult robberies than the juvenile residential burglaries are in comparison to the adult burglaries. The other reason for the difference, which has been borne out in other sentencing studies, is that the more serious the crime, the less attention there is to the characteristics of the defendant in sentencing. In other words, for more serious crime—particularly violent crime—the focus is on the seriousness of the crime and not the age, prior record, or other circumstances of the defendant. For less serious property crimes, the focus is more on the defendant, and his cumulative record of criminality, rather than the specific offense that brings him before the court.

Finally, the higher conviction rate for juvenile armed robbers (60-74 percent), compared to the more normal 50 percent[30] found with adults, may reflect one of the differences between juvenile and criminal law discussed earlier. Presumably, by the time a robbery case gets into court, having survived a number of earlier screenings, there is a strong belief that the defendant is a "bad" individual. For a conviction in criminal court, the state must prove "beyond a reasonable doubt" that the defendant did commit one of the specific acts alleged in the formal complaint. However, for a finding of delinquency in the juvenile court, the prosecutor must only find that the juvenile committed some crime, regardless of its nature. This wider latitude to find delinquency in the juvenile court may account, in part, for the higher juvenile conviction rate.

In addition to the effects of age, presented earlier, two other factors appear to be strongly correlated with juvenile disposition patterns—weapon type and group participation. Armed robbers who use guns, as opposed to sharp or blunt instruments, and those who act alone are much more likely to be incarcerated. Of the 18 armed juvenile robbers arrested, who also acted alone, 30 percent were committed to CYA. Only 13 percent of those who acted in groups were committed to CYA. Twenty-seven percent of those armed with guns were committed to CYA compared to only 10 percent of those who used other weapons.

CALIFORNIA PRISON INMATES: A LONGITUDINAL PERSPECTIVE

Another way of examining the effects of graduation from juvenile court is to look at the severity of sanctions meted out to a sample of criminals just before and just after they turned 18.

The data for this analysis were collected as part of Rand's Inmate Survey II which was designed to provide information on criminal careers. The sample consists of 340 men who were inmates at one of four California prisons in January 1978 and was drawn from a weighted sample intended to represent an incoming cohort of prisoners.[31] The weights used for sampling were simply the inverse of each inmate's known or expected sentence length.

For the 340 cases in our sample, 43 contained no data on juvenile record. Out of the remaining 297 cases, 175 (59 percent) had at least one juvenile conviction.

The first question of interest is whether the severity of the juvenile record was related to sentence severity for the first adult conviction. To answer this question, we examined the disposition pattern for three different categories of crime: (1) crimes against the person, (2) burglary, and (3) other felonies. We controlled on juvenile record severity in two different ways: (1) number of juvenile convictions and (2) disposition of last juvenile conviction.

Table 3.13 is a cross-tabulation of numbers of juvenile convictions by first adult conviction type. Table 3.14 shows the percentage of defendants, with and without

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[30] Studies of adult felony disposition rates in a number of cities have found that about half of all felony arrests result in conviction.

[31] This sample specifically excluded offenders committed from Los Angeles County and included commitments for San Francisco, San Diego, Ventura, Fresno, and Stockton.

Table 3.13

NUMBER OF JUVENILE CONVICTIONS BY FIRST ADULT CONVICTION TYPE, RAND CALIFORNIA PRISON SURVEY

Number of Juvenile Convictions	First Adult Conviction Type (percent of total cases)		
	Crime Against Person (n=115)	Burglary (n=61)	Other Felonies (n=154)
0	37	28	38
1-2	32	34	30
2+	18	30	18
Unknown	12	8	14
Total	100	100	100

Table 3.14

PERCENTAGE OF CONVICTED DEFENDANTS SENTENCED TO EITHER CYA OR PRISON ON THEIR FIRST ADULT CONVICTION[a]

First Adult Offense Type	Number of Juvenile Convictions	
	0	1+
Crime against person	70	74
Burglary	35	51
Other felonies	24	22

[a] Entries are percent of total cases in each cell.

records of juvenile convictions, who were sentenced to either the CYA or prison as a result of that first conviction.

Only for burglary arrestees do we see any apparent association between the number of juvenile convictions and first adult sentence severity.[32] If this relationship held, it would be consistent with our Los Angeles data that showed robbery and assault sanctions to be insensitive to offender age while burglary sanctions increased with age. From Table 3.14 we can infer that for crimes against the person, there is a presumptive state commitment that can only be mitigated by the seriousness of the actual crime; i.e., the offender's characteristics are irrelevant. For "other felonies" there is a presumption against a state term, again with the final determination depending on the seriousness of the crime—not the defendant's record. Burglary, on the other hand, appears to be a marginal crime in which prior record may have more equal weight.

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[32] The observed difference is not statistically significant (χ^2) at the .10 level due to the small sample size.

In Table 3.15 we see no association between the severity of sentence for the last juvenile conviction and the severity of sentence for the first adult conviction, for any crime type.

Table 3.15

PERCENTAGE OF CONVICTED DEFENDANTS SENTENCED TO CYA OR PRISON ON THEIR FIRST ADULT CONVICTION

First Adult Offense Type	Prior Juvenile Disposition			
	None or Probation	n	Institutionalized	n
Crime against person	71	41	77	44
Burglary	57	14	48	31
Other felonies	23	52	24	58

Our next step was to compare the severity of sentences for the last juvenile conviction with the first adult conviction. Table 3.16 shows the percentage of juvenile and adult convictions falling into the three offense categories of (1) crimes against the person; (2) burglary or arson; and (3) other[33] for sampled inmates with at least one known juvenile conviction.

Table 3.16

DISTRIBUTION OF OFFENSE TYPE FOR LAST JUVENILE AND FIRST ADULT CONVICTION FOR INMATES WITH JUVENILE CONVICTIONS, RAND CALIFORNIA PRISON SURVEY

(in percent)

Offense Type	Last Juvenile Conviction	First Adult Conviction
Crime against person	22	34
Burglary	29	23
Other	49	43
Total	100	100

NOTE: n = 171.

Table 3.17 shows the percentage of defendants in each category who were sentenced to either the CYA or state prison. It would appear that the sanction severity was about equal for the more serious offenses of crimes against the person, or burglary. But for the less serious "other" crimes, the adult sanction was much

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[33] Only felony convictions were counted for both juveniles and adults.

Table 3.17

PERCENTAGE OF CONVICTED DEFENDANTS SENTENCED TO CYA OR STATE PRISON[a]

Offense Type	Last Juvenile Conviction	First Adult Conviction
Crime against person	70	74
Burglary	54	51
Other	45	22

[a]Entries are percent of total cases in each cell.

lower,[34] lending support to the hypothesis that with juveniles the system is more likely to intervene in more minor cases than with adults, possibly because prior juvenile record may be a more important consideration at the last juvenile sentencing as opposed to the first adult sentencing.

The results obtained in Table 3.17 are somewhat surprising in light of the fact that the use of a prison sample for this analysis biases the data toward more severe adult sentences. Since some defendants will be in prison based on their first conviction, while comparable defendants who were granted probation are excluded, the sample should overrepresent those who were sentenced to prison on their first adult conviction.

In summary, this sample of California prison inmates, as a group, did not experience an increase in sanction severity as they crossed over from the juvenile to the adult court. Their pattern of sentencing as young adults suggests that juvenile records were associated with harsher sentences only for those charged with burglary.

Putting these two pieces of analysis together, we surmise that for the later juvenile years as well as all adult years, in/out sentencing decisions are not sensitive to age or prior record for violent crimes, or for property crimes less serious than burglary. Only in burglary do we see an association between (1) prior juvenile record and first adult sentence severity and (2) age and adult sentence severity. In California, burglary appears to be a marginal crime in which the defendant's prior record has a significant effect on whether he is sentenced to state time. For more serious or less serious crime, prior record appears to have much less effect.

FRANKLIN COUNTY, OHIO

Compared to Los Angeles, Franklin County, Ohio, is a smaller, less dense metropolitan jurisdiction. Its principal city is Columbus, which provides the bulk of the criminal justice workload. The maximum age of jurisdiction of the juvenile court in Ohio is 17, the same as in California.

Our data for this analysis include all persons (juveniles and adults) arrested for murder, rape, robbery, or assault in Franklin County, who had charges filed against them by the prosecutor and had their cases disposed of in 1973. The data come from a research project conducted by Stephan Van Dine and his colleagues at the Academy for Contemporary Problems in Columbus.[36]

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[34] This difference is significant (χ^2) at the .005 level.

Table 3.18 shows a breakdown of the 468 Franklin County cases by age and offense type. Note the low frequency of the more serious crime types among offenders less than 18 years old. Note also that the distribution of offenses among the 18- to 20-year-olds looks much more like that of the 21-24 group than that of the 16-17 group.

Table 3.18

NUMBER OF FRANKLIN COUNTY CASES IN SAMPLE CATEGORIZED BY AGE AND OFFENSE TYPE

Age	Offense Type					Total
	Multiple	Murder	Robbery	Rape	Assault	
≤13	-	-	12	6	1	19
14-15	1	1	31	8	6	47
16-17	2	2	44	2	11	61
18-20	15	5	48	21	3	92
21-24	20	8	48	21	11	108
≥25	15	21	34	36	35	141
Total	53	37	217	94	67	468

Table 3.19 presents the aggregate conviction and incarceration rates for the same age groups shown in Table 3.18. Note the absence of any systematic relationship between age and conviction rate while the relationship between age and incarceration rate appears quite clear. Youthful offenders (under 20 years of age) face a substantially lower chance of being incarcerated than their older counterparts. Note that the large jump in incarceration rates comes a full two years after the shift in jurisdiction from juvenile to adult court. The 18- to 19-year-olds are being sentenced similarly to the 16-17 group, rather than the 21-24 group whose offense pattern they appear to match.

Table 3.20 shows the incarceration rate for a single offense type, robbery, with the same result; the 18-19 group is sentenced like the younger juveniles, not like older adults. Table 3.21 shows that the observed relationship holds even when controlling on prior record.

In summary, Franklin County in 1973 could be characterized as a jurisdiction in which youthful violent defendants got lighter sentences than older violent defendants. The principal shift in severity appears to occur at about age 20, rather than age 18, indicating that the informal sentencing policies of the adult court are more

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[36] See S. Van Dine, John P. Conrad, and Simon Dinitz, *Restraining the Wicked*, Lexington Books, Lexington, Massachusetts, 1979. The computer runs for this analysis were made by Van Dine in response to our requests for specific tables.

Table 3.19

Conviction and Incarceration Rates by Age for Franklin County Sample: All Offenses Combined

(in percent)

Age	n	Conviction Rate[a]	Incarceration Rate[b]
16-17	61	72	55
18-19	62	69	53
20-21	57	58	73
22-23	53	72	76

[a] Percent of arrests. Not comparable to Los Angeles because these only include cases that are filed by the district attorney.

[b] Percent of convictions. The incarceration rate is based on the number of convicted defendants and includes any sentence resulting in confinement. In these data it includes: prison and shock probation (usually resulting in a one or two month prison stay), the reformatory for first time felony defendants under age 30, state prison, mental health facilities, jail, and the Ohio Youth Commission.

Table 3.20

Conviction and Incarceration Rates by Age for Franklin County Robbery Cases

Age	n	Conviction Rate[a]	Incarceration Rate[b]
14-15	31	87	15
16-17	44	66	48
18-20	48	62	47
21-24	48	43	71
25-30	23	79	83

[a] Percent of those arrested.

[b] Percent of those convicted.

Table 3.21

CONVICTION AND INCARCERATION RATES FOR FRANKLIN COUNTY SAMPLE: BY AGE AND NUMBER OF PRIOR ARRESTS: ALL OFFENSES COMBINED

	No Prior Arrests			Prior Arrests[a]		
Age	n	Conviction Rate[b]	Incarceration Rate[c]	n	Conviction Rate[b]	Incarceration Rate[c]
16-17	39	67	46	22	82	67
18-19	29	59	29	33	79	69
20-21	28	57	62	29	58	82
22-23	15	73	72	38	71	77

[a] Counting arrests for felony offenses only.

[b] Percent of arrests.

[c] Percent of convictions.

important in explaining sentencing patterns than the formal distinctions between the juvenile and adult courts.

This may be a very significant point in the debate about decreasing the maximum age jurisdictions of the juvenile court as a way of "getting tougher" on serious juvenile offenders.

NEW YORK CITY

For our final case study of sanctions and age, we used data from the Vera Institute study of felony arrest dispositions,[36] a probability sample of 1888 adult felony arrests in 1971, drawn from the four major boroughs. Our analysis was confined to burglary and robbery cases involving defendants less than 26 years of age—a total of 325 cases.[37]

In New York, the maximum age of jurisdiction for the juvenile court is 15. However, under New York Criminal Procedure Law Sec. 720.10, a youth between 16 and 19 years old is eligible for youthful offender treatment if the charge is not an "A" felony and he has not previously been convicted of a felony. Youthful offender treatment means that the case record is sealed. Out of the Vera sample of 1888 cases, 56 were excluded from the study for this reason.[38]

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[36] Vera Institute of Justice, *Felony Arrests: Their Prosecution and Disposition in New York City's Courts*, 1977.

[37] We selected the two largest offense categories in order to control on offense types.

[38] If 20 percent of the total sample (1888) were 16- to 19-year-olds, the 56 cases represent a loss of only 15 percent of the cases in this age range. In our data there are 38 burglary and 43 robbery cases involving 16- to 19-year-olds. The number with a prior felony conviction is only four for burglary and nine for robbery, so that all of the lightweights have not been excluded. The complete breakdown of 16- to 19-year-olds by prior record is as follows:

	Burglary	Robbery
Felony conviction	4	9
Felony arrest	15	7
Misdemeanor arrest	2	5
Unknown	5	8
No Record	12	14

Table 3.22

CONVICTION AND INCARCERATION RATES BY AGE FOR NEW YORK BURGLARY CASES

Age	n	Conviction Rate[a]	Incarceration Rate[b]
16-17	30	50	27
18-20	45	73	52
21-25	55	80	57

[a] Percent of arrests.

[b] Percent of convictions.

Table 3.23

CONVICTION AND INCARCERATION RATES BY AGE FOR NEW YORK ROBBERY CASES

Age	n	Conviction Rate[a]	Incarceration Rate[b]	Heavy[c] Incarceration Rate[b]
16-17	36	64	43	4
18-20	57	60	72	28
21-25	62	66	60	26

[a] Percent of arrests.

[b] Percent of convictions.

[c] More than 1 year.

The data from the Vera sample are summarized in Table 3.22, which presents conviction and incarceration rates for three specific age groups of burglary arrestees, and Table 3.23, which presents similar data for robbery arrestees.

From Table 3.22 we see that both conviction and incarceration rates appear to increase with age,[39] the big increase in incarceration rate coming at age 18, two years after jurisdiction transfer to the criminal court.

The large increase in likelihood of conviction, with age, for burglary is a new finding but not unexpected. One could anticipate that for marginal crimes, where there is considerable debate over whether anyone should be imprisoned, the court or district attorney will find some means of dropping lower priority cases while holding onto the more serious. This hypothesis is consistent with the data in Table 3.23 which do not demonstrate any pattern in robbery convictions as a function of age.

Incarcerations, however, are another matter. For both robbery and burglary the age effects appear considerable.[40] From Tables 3.22 and 3.23 we can see that the likelihood of incarceration increases substantially between the youngest age groups, but not later on.[41] For robbery, this phenomenon is also true if we look only at the heavy incarceration sentences—those longer than one year.

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[39] The increase in convictions is significant (X^2) at the .05 level, but the increase in incarceration rate is not, due to the very small number of incarcerations.

[40] As in burglary, the increase in incarceration rate for robbery, with age, is not statistically significant due to the small sample sizes.

This finding is consistent with the Franklin County data in that it shows only the youngest defendants receiving substantial breaks. After two years in the system—age 18 in New York and age 20 in Franklin County—the leniency for age is substantially diminished.

This similarity of patterns between Franklin County and New York City, with a two-year age shift which matches the age of transfer between the juvenile and adult courts, suggests that the leniency shown to young adults could be a product of the two-track system and not wholly the result of their age. If the leniency was age-dependent alone, say, because younger offenders did less serious crime or young offenders were seen as more deserving of rehabilitation efforts, then the observed leniency should occur at the same ages.

CONCLUSIONS ABOUT THE RELATIONSHIP BETWEEN AGE AND SANCTION

After looking at disposition data for three metropolitan jurisdictions, what can we say about the consistency with which young adult defendants are treated? And how can any differences be explained?

In comparing the outcomes, we must keep in mind that these jurisdictions vary in several important aspects. In New York, for example, the jurisdiction of the family (juvenile) court ends at the 16th birthdate. In California and Ohio, juvenile status ends at the 18th birthdate. All three states make special provisions for treating young adult defendants. In California the CYA commitment is available; in Ohio there is a special reformatory for first-time offenders; in New York, a special youth docket confers some of the benefits of juvenile treatment on young adult defendants.

It appears that the treatment of young adult defendants varies in several important ways among these jurisdictions. The principal effects are summarized in Table 3.24. In Los Angeles, the only important special consideration given to young adults is the CYA commitment and the resulting reduction in expected time served. In conviction rate or likelihood of incarceration, at either the state or county level, young adults are treated no more leniently than anyone else for most crimes. Burglary was the only exception where they had a slightly lower incarceration rate.

In Franklin County, young adults are treated more leniently than older offenders in that they are less likely to be incarcerated. Table 3.25 illustrates this point by presenting comparative figures on the percentage of convicted robbery defendants who are sentenced to terms of more than one year. In Los Angeles, the percentage is about the same for defendants 18-20 or 21-25—about 37 percent. In Franklin County, these two age groups face very different risks. For the 18-20 age group, 33 percent receive state commitments, slightly less than in Los Angeles. But for the 21-25 group, the percentage jumps to 56 percent—a 70 percent increase in commitment rate over the younger age group.

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[41] Presumably, the addition of the excluded youthful offender cases would further reduce the incarceration rate for the youngest offenders since they would be less serious cases or have lighter records.

Table 3.24

SUMMARY OF AGE-SANCTION EFFECTS FOR THREE STUDY JURISDICTIONS

Jurisdiction	Conviction Offenses Analyzed	Leniency Shown to Young Adults as Compared to Older Offenders		
		Conviction Rate	Incarceration Rate	State Commitment Rate
Los Angeles County	Robbery, assault, burglary, auto theft	None	Slight, for burglary only	Slight, for burglary only
Franklin County, Ohio	Violent felonies	None	Yes	Yes
New York City	Burglary, robbery	Burglary only	Yes	Yes

Table 3.25

PERCENTAGE OF CONVICTED ROBBERY DEFENDANTS SENTENCED TO MORE THAN ONE YEAR

Age	Percent of Defendants Sentenced		
	Los Angeles	Franklin County	New York City
16-17	–	–	4
18-20	36	33	28
21-25	38	56	26

Finally, in New York City we can see that the inclusion of 16- and 17-year-olds in the adult court does not have the effect on sanctions one might expect. Only 4 percent of these extra-young-adults receive state commitments, a sentencing pattern similar to what we would expect in juvenile court. However, at age 18 the change is dramatic. The state commitment rate jumps to 28 percent—the same as for older defendants.

Another similarity between Los Angeles and New York[42] is that age appears to have a significant aggravating effect on how burglary defendants are handled. In Los Angeles, incarceration rates go up with age. In New York, conviction rates *and* incarceration rates go up with age.

From this analysis we can draw several conclusions about the relationship between age and sanction:

1. Sanction policies, as a function of age, appear to vary considerably across jurisdictions and possibly even over time.
2. Sometimes the apparent effects of age on sanctions lag behind the formal legal age distinctions, as in the case of New York. Although 16- and 17-

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[42] We do not have data to check on this for Franklin County.

year-olds are legally adults there, they appear to be sentenced as if they were still in the juvenile court.

3. Sanction severity can be analyzed as either an absolute or relative phenomenon. In Franklin County, 18-year-olds are sentenced much more leniently than older defendants, but no more leniently than defendants of any age in Los Angeles.
4. Until we have data that allow us to use better controls on offense severity, we cannot go much further in examining sanction policies for youths. Our data suggest that both sanctions and offense seriousness may be related to age in these critical years.

IV. JUVENILE RECORD USE IN ADULT COURT PROCEEDINGS: A RAND PROSECUTOR SURVEY

> *In many states, outgrowing the juvenile court's jurisdiction may have two paradoxical consequences: instant responsibility and retroactive virginity. As soon as an offender is no longer young enough to be "delinquent," he is treated as an adult fully responsible for his acts. But a number of laws and practices shield records of juvenile adjudication from prosecutors and judges in the adult system. As a result, an individual who has acquired an extensive and serious record in the juvenile court enters the adult system as if he were a first offender.*
>
> —*Confronting Youth Crime, Report of the Twentieth Century Task Force on Sentencing Policy Toward Young Offenders,* Holmes & Meier Publishers, Inc., 1978.

> *Even when a conviction is obtained, the judge may be hampered by incomplete information about a juvenile's prior record. . . . Concerns over privacy may prevent even the sentencing court itself from examining the sealed record of the defendant.*
>
> *We must eliminate the "two track" criminal justice system for serious violent juvenile offenders. Age cannot justify treating the 17 year old rapist or murderer differently from his adult counterpart. The poor, the black, the elderly—those most often victimized by crime—do not make such distinctions. Nor should the courts. The rules of the game should be changed concerning efforts to identify violent juveniles . . . the law should allow photographing and fingerprinting of offenders. And, most important, an up-to-date criminal history of such offenders should be readily available to judges at the time of sentencing.*
>
> —Senator Edward M. Kennedy, Chairman of the Senate Judiciary Committee, U.S. Congress, in a speech at the 1978 Meeting of the International Association of Chiefs of Police.

Within the general focus of this report, which concerns the relationship between age, crime, and sanctions, we have a special interest in the crossing of boundaries between the juvenile and the adult courts. We are particularly interested in the question of information-sharing between the two systems—an important topic and the subject of rising controversy, especially as crimes committed by juveniles become more serious.

Defenders of the juvenile court concept generally advocate nondisclosure of juvenile histories as a way of (1) preventing what are seen to be the criminogenic effects of prematurely labeling an individual as a criminal and (2) protecting young adults from adverse repercussions of their youthful transgressions.[1] On the other hand, prosecutors, probation officers, and judges in the adult court, who face the day-to-day task of distinguishing between the less serious and more serious defendants who come before them, have a natural curiosity about what the juvenile record contains. Both common sense and prior research tell these officials that the juvenile record is the best available predictor of young adult criminality.[2] Given the various pressures placed on these officials to protect the community from serious offenders, it would be surprising if there were not a variety of channels, both formal and informal, for passing juvenile record information to the criminal court to serve what it sees to be a legitimate need.

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[1] For a discussion of the stigmatizing effects of a juvenile record, see John Coffee, "Privacy Versus *Parens Patriae:* The Role of Police Records in the Sentencing and Surveillance of Juveniles," *Cornell Law Review,* Vol. 57, 1972, pp. 571-594; A. Mahoney, "The Effect of Labeling upon Youths in the Juvenile Justice Systems: A Review of the Evidence," *Law and Society Review,* December 1974, pp. 597-608.

Up to this time, the debate about the proper degree of information-sharing and the merits of proposed reforms has been data free.[3] Actual information-sharing practices were described only by anecdotal reference. It would seem that before any reforms can be seriously contemplated, it is necessary to examine current practice, and to see how the present safeguards affect policy.

As an initial probe into this uncharted area, we elected to survey the largest prosecutors' offices in each state. For a variety of reasons the prosecutor was selected as the best target for this initial inquiry. First, that office has more contacts with the rest of the criminal justice system than any other agency. The prosecutor deals directly with the police, probation, court, corrections, and state criminal history systems. Second, the prosecutor makes more policy decisions based on what he or she thinks is an appropriately desired sanction than any other actor in the system. Decisions involving bail, charging, plea negotiation, and sentence recommendation are often in the hands of the prosecutor. Conceivably, these decisions could be affected by the presence of a juvenile record. Finally, for survey purposes, the prosecutor has the advantage of being a unified agency in which discretionary decisions are governed by some degree of centralized authority or policy. This is not necessarily the case for officials such as judges or public defenders who have a formally recognized degree of independence in handling their cases.

Despite these advantages, there is a disadvantage in surveying prosecutors. The prosecutor in an adversary system is not a disinterested party. Few prosecutors would complain about having too much information; on the contrary, their natural bias is toward maximum information-sharing. Thus the prosecutor's perception of the extent and quality of information shared between the two systems must be viewed with that bias kept in mind.

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[2] See Lyle Shannon, *Assessing the Relationship of Adult Criminal Careers to Juvenile Careers*, Iowa Urban Community Research Center, University of Iowa, Iowa City, forthcoming; James J. Collins, *Offender Careers and Restraint: Probabilities and Policy Implications*, Final Draft Report, LEAA, U.S. Department of Justice, 1977; Marvin Wolfgang, *From Boy to Man—From Delinquency to Crime*, paper prepared for the National Symposium on the Serious Juvenile Offender, Department of Sociology, University of Pennsylvania, 1977.

[3] Related literature was reviewed and helped guide the design of the survey. However, this literature refers primarily to the philosophy surrounding juvenile record protection, sealing, and expungement, and the use (and misuse) of those records within the juvenile court. We are aware of no previous attempt to directly address the issue of information-sharing between the juvenile and adult courts. For these related issues, see: J. Note, "Juvenile Police Record-Keeping," *Columbia Human Rights Law Review*, Vol. 4, 1972, pp. 461-484; LEAA, U.S. Department of Justice, "Court Structure, Judicial and Non-Judicial Personnel, and Juvenile Records," *A Comparative Analysis of Standards and State Practices*, Vol. II, 1977; Edwin M. Lemert, "Records in Juvenile Court," in Stanton Wheeler (ed.), *On Record: Files and Dossiers in American Life*, Russell Sage Foundation, New York, 1969, pp. 335-387; Paul Piersma et al., "The Juvenile Court: Current Problems, Legislative Proposals, and a Model Act," *Saint Louis University Law Journal*, Vol. 20, 1975, pp. 1-99; Coffee (1972), op. cit.; Terry L. Baum, "Wiping Out a Criminal or Juvenile Record" *Journal of the State Bar of California*, Vol. 46, 1965, pp. 816-830; Elyce Z. Ferster and Thomas F. Courtless, "The Beginning of Juvenile Justice, Police Practices, and the Juvenile Offender," *Vanderbilt Law Review*, Vol. 22, 1969, pp. 567-608; Michael L. Altman, "Juvenile Information Systems: A Comparative Analysis," *Juvenile Justice*, Vol. 24, February 1974, pp. 2-11; and B. Kogan and D. Loughery, "Sealing and Expungement of Criminal Records—The Big Lie," *Journal of Criminal Law, Criminology, and Police Science*, 1970, pp. 378-385.

We expected that the extent of information shared between juvenile and adult courts would differ dramatically across jurisdictions. Legal statutes are quite vague in this particular area. Nearly all states have enacted statutory requirements for confidentiality of juvenile records, and more than half explicitly include police juvenile records in the mandated confidentiality.[4] Yet these statutes almost without exception are aimed at preventing *public* disclosure only. All contain specific and most contain open-ended exceptions permitting access to juvenile court and (where considered) police juvenile records. Criminal justice agencies can be specified as an exception requiring at most a juvenile court order, which might be of a blanket nature. There is an almost universal practice among law enforcement agencies to exchange arrest information, including juvenile arrests.[5] This practice has been formalized by statute in some jurisdictions and by professional standards.[6] Although most states have laws that permit the sharing of information in particular instances, the practicality of the matter appears to be the critical issue. Since the juvenile and adult court systems are totally separate institutions—with separate personnel, policies, and record-keeping systems—information-sharing is not a routine matter.

SURVEY OBJECTIVE AND METHOD

Our nationwide survey involved the largest prosecutors' offices in each state. The survey sought to answer the following questions:

1. What type of juvenile history information does the prosecutor usually have in deciding case dispositions for young adult felony defendants? What is the source of the information?
2. At what point in the proceedings does the prosecutor become aware of the defendant's juvenile record?
3. Does the prosecutor judge the information in the juvenile record accurate and complete?
4. What impact do juvenile records have on prosecutorial decisionmaking?
5. What factors (e.g., size of jurisdiction) are related to variations in the extent, quality, and use of juvenile records in adult dispositions?

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[4] The distribution of jurisdictions (50 states plus the District of Columbia) with respect to confidentiality is as follows: court records and police records, 55 percent; court records only, 35 percent; neither, 10 percent.

[5] Sixty-six percent of the respondents in a survey of police departments responded affirmatively to the question, "Is there a sharing of information dealing with delinquent youths in a county or regional system?" Reported in R. W. Kobetz, *The Police Role and Juvenile Delinquency*, The International Association of Chiefs of Police, Gaithersburg, Maryland, 1971.

[6] For example, see American Bar Association Commission on Juvenile Justice Standards, *Standards Relating to Juvenile Records and Information Systems*, Juvenile Justice Standards Projects, Institute of Judicial Administration, Ballinger Publishing Co., Cambridge, Massachusetts, 1977; National Council of Juvenile and Family Court Judges, *Principles for the Creation, Dissemination and Disposition of Manual and Computerized Juvenile Court Records*, Model Court Systems and Technology Committee, 1978.

Before we proceed, a definitional matter needs to be clarified. Juvenile records are an exceedingly broad entity, encompassing legal, social, psychological, and other items. Our concern is with crime-related information only—mainly records of arrest, adjudication, and disposition for nonminor offenses. These records may be created and/or held within a variety of agencies, including law enforcement, the probation department, the court, and the local state or federal bureaus of criminal history information. Our interest here is not whether the juvenile acquires a criminal record as a result of an arrest, or to what agencies that information is distributed. It is, instead, the extent to which that record survives past the maximum age of juvenile court jurisdiction and is used in adult criminal proceedings.

To answer the above questions a questionnaire was sent in October 1979 to a national sample of prosecutors. The return rate was 66 percent, resulting in an overall sample size of 71.[7] The questionnaire dealt with the prior record information the prosecutor usually had when processing the case of a young adult defendant, the prosecutor's opinion as to the quality of the information, the effect that such information has on his decisions, and other related matters. Factual information about the jurisdiction (e.g., size, age of majority, felony caseload) was also obtained.

The respondents were told the survey asked about the access their office had to criminal history information concerning *young adult felony defendants*, defined as "those defendants who are only two or three years past the maximum age of juvenile court jurisdiction. In most jurisdictions, this will mean 18-21 year old defendants, but in others it may mean 16-19 or 17-20 year old defendants." The respondents were asked to keep the two to three year age range constantly in mind when completing the survey. By focusing attention on young felony defendants just past the age of majority, we hoped to understand the extent of information shared between the juvenile and adult courts in cases where presumably the information is particularly pertinent.

To supplement the questionnaire information, a review of the legal statutes governing the confidentiality of records, the fingerprinting and photographing of juveniles, and related items was conducted.[8] This additional information was combined with the questionnaire data in the analysis.

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[7] The sampling procedure was as follows: for the ten largest states, the district attorneys in the three largest counties were included. For the remaining states, the district attorneys in the two largest counties were included. The questionnaire was mailed to these district attorneys with a cover letter explaining the purposes of the study.

The return rate for the ten largest states was 21/30 (70 percent); for the remaining states, 50/70 (64 percent); or an overall return rate of 71/108 (66 percent). Only four states remain unrepresented—Delaware, Mississippi, Tennessee, and Alabama.

The questionnaire contained approximately thirty questions, many of them multi-part and open-ended. It was estimated that the survey required approximately one hour to complete. A copy of the instrument, "Survey of the Availability and Use of Criminal History Information," can be obtained by contacting Joan Petersilia, The Rand Corporation.

[8] The majority of the statute information was drawn from J. Austin, R. Levi, and P. J. Cook, *A Summary of State Legal Codes Governing Juvenile Delinquency Proceedings*, Center for the Study of Criminal Justice Policy, Duke University, Durham, North Carolina, July 1977; Samuel M. Davis, *Rights of Juveniles—The Juvenile Justice System* and *1978 Supplement, Appendix B*, Clark Boardman Co., Ltd., New York, 1974, 1978. The information was updated by Marvin Lavin, an attorney at The Rand Corporation.

THE EXTENT AND TYPE OF JUVENILE RECORD INFORMATION SHARED

Police-Provided Juvenile Records

The prosecutor has a number of potential sources from which to obtain a defendant's juvenile history. The police may make a record of juvenile contacts, even though no formal arrest occurred. If an arrest occurs, a police arrest record will probably be created. If the juvenile is referred to probation for a petition request, another set of more comprehensive records is created. And if the case is adjudicated in court, still another set of records containing subsequent court actions will be created.[9] Conceivably, the prosecutor could contact each of these departments and request criminal record information on the defendants. However, for the most part, the prosecutor probably relies on information supplied by the police investigator at the time of filing. Prosecutors do not normally have sufficient investigative resources to supplement the police-provided information except in unusual situations. Since juvenile histories may be difficult to locate or incomplete (e.g., arrests with no dispositions) police may not routinely provide them either. This led one panel of experts to conclude "in most jurisdictions, at the critical early stages of adult prosecution, records of adjudication in the juvenile court are often not available."[10] We examine the validity of this assumption below.

In our survey each prosecutor was asked, "When you are handling the case of a young adult (two to three years past maximum age of juvenile court jurisdiction) how often do the *police*, as part of their investigation report, provide your office with information concerning the defendant's juvenile criminal history? What type of information is usually contained in these reports (e.g., local arrests, statewide dispositions)?" Table 4.1 contains their responses.

Table 4.1

EXTENT AND TYPE OF JUVENILE HISTORY INFORMATION PROVIDED BY POLICE

How Often Do the Police Provide Juvenile Histories?	What Type of Information Is Provided?
Always (6%)	Local information only (80%)
Usually (13%)	Arrests only (10%)
Sometimes (21%)	Dispositions only (15%)
Rarely (35%)	Arrests and dispositions (75%)
Never (25%)	Local and statewide information (15%)
	Arrests only (0%)
	Dispositions only (12%)
	Arrests and dispositions (88%)
	No set pattern; whatever is available or known (5%)

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[9] For a discussion of the contents of these different records, see Lemert (1969), op. cit.
[10] Zimring, *Confronting Youth Crime*, op. cit., p. 18.

Sixty percent of our respondents said the police "never" or "rarely" provided them with juvenile histories on young adult defendants. Further, when juvenile histories are provided, they refer mostly to local rather than statewide activities.

It is conceivable that those prosecutors who report receiving little information concerning the defendants' *juvenile* history also report receiving little information from the police concerning adult criminal histories. To see if this was the case, each prosecutor was also asked about police-provided *adult* criminal histories. The comparison in Table 4.2 shows that in 74 percent of the jurisdictions adult criminal histories are "usually" or "always" provided, as compared to 19 percent for juvenile histories. Additional analysis showed that 50 percent of the jurisdictions reported that the police-provided adult histories include statewide arrests and dispositions.

Table 4.2

EXTENT OF JUVENILE AND ADULT CRIMINAL HISTORIES PROVIDED BY POLICE

Extent	Police Provide Juvenile Records	Police Provide Adult Records
Always	6%	44%
Usually	13%	30%
Sometimes	21%	15%
Rarely	35%	7%
Never	25%	4%

The responses in Table 4.2 are informative in that they reflect the extent to which the sharing of juvenile records has become routine practice. This appears to be true in, at most, 19 percent of the jurisdictions.

What factors influence whether the police provide the prosecutor with juvenile records in jurisdictions where such sharing is not routine? Approximately half of the prosecutors said juvenile records would be included in the police report if the current offense was particularly serious. The other half reported that juvenile records were provided when the investigating officer had personal knowledge of the defendant's history, i.e., "when the cop knows."

The most common instrument for sharing juvenile histories is the "rap" sheet. Fifty percent of the prosecutors said the information they received was in the form of a rap sheet, which usually lists all police contacts and arrests. Rap sheets have been sharply criticized because they often record mere inquisitional suspicion, along with provable law violations. One revision sought during the past decade is to require a statement of the disposition of the case on the rap sheet. The majority of prosecutors who said they received juvenile rap sheets from the police indicated that local arrests *and* dispositions were usually present. Somewhat surprising is the fact that the other half of the responding prosecutors said juvenile histories were provided more informally; 10 percent said the police told them orally, 30 percent said information was contained in investigation notes, and 10 percent said the report would include Xerox copies of index cards, and other miscellaneous materials.

Prosecutor-Initiated Juvenile Records

The prosecutor is not totally dependent on the police for defendant-related information. The prosecutor may have his or her own investigative personnel or may have several police investigators assigned for use in follow-up investigations. And in some rare instances, the prosecutor may conduct limited investigations. It is conceivable that the prosecutor may judge juvenile records of such importance that he or she directs resources to locating them. We were interested in how common this upgrading of police-provided information was. Each respondent was asked "How often does your office attempt to locate its own information about the juvenile criminal histories of young defendants? What type of information are you usually able to locate?" The responses are contained in Table 4.3.

Table 4.3

EXTENT AND TYPE OF JUVENILE HISTORY INFORMATION
LOCATED BY PROSECUTOR

How Often Do You Attempt to Locate Juvenile Histories?	What Type of Information Are You Usually Able to Locate?
Always (11%)	Local information only (70%)
Usually (15%)	Arrests only (30%)
Sometimes (17%)	Dispositions only (3%)
Rarely (41%)	Arrests and dispositions (67%)
Never (15%)	Local and statewide information (17%)
	Arrests only (22%)
	Dispositions only (11%)
	Arrests and dispositions (67%)
	No set pattern; whatever is available or known (13%)

Prosecutors do not routinely attempt to locate juvenile histories. Seventy-five percent of the prosecutors said serious administrative problems and resource constraints limited their ability to search for juvenile records except in unusual circumstances. The problems cited most often were "insufficient manpower for record search" (32 percent); "locating the records" (30 percent); and "cooperation from other agencies" (38 percent).

When prosecutors did search for juvenile records they usually checked back with the police (66 percent), looked at previous probation reports (41 percent), or searched their own records (50 percent). Only 8 percent of the prosecutors said they consulted a statewide information system. Prosecutors were also asked which source contained the most accurate and complete juvenile record information. The probation department records were ranked the highest (26 percent); the prosecutor's own juvenile register next (15 percent); then, police department files (12 percent); and lastly, statewide information systems (5 percent). Eighteen percent of the respondents wrote in some "other" local file as the most accurate and complete.

Each prosecutor was asked whether he sought his own information on adult criminal histories. A comparison between the degree to which the prosecutor seeks juvenile as compared with adult histories is contained in Table 4.4.

Table 4.4

EXTENT OF PROSECUTOR'S ATTEMPTS TO LOCATE JUVENILE AND ADULT CRIMINAL HISTORIES

Extent	Percent of Responding Jurisdictions	
	Prosecutor Seeks Juvenile History	Prosecutor Seeks Adult History
Always	11%	62%
Usually	15%	13%
Sometimes	17%	8%
Rarely	41%	15%
Never	15%	1%

Prosecutors nearly always search out adult histories, and very rarely attempt to locate a defendant's juvenile history, even if the defendant is only 18 to 21 years old. Part of the explanation for this difference in prosecutor behavior lies in the fact that locating juvenile records appears to be a low prosecutorial priority. The other possible reason is the nature of the records being sought. Since most states do not maintain statewide juvenile criminal histories, local police records are the only source of summary information. Once the prosecutor has obtained the local police record, the only reason to search further is to find out the specific facts or disposition of an offense. Adults are more likely to be transient or to have served state or federal prison terms. Since most states maintain a statewide system for adult criminal histories, there is reason to make inquiries of them. Also, state penal codes often make special provisions for the enhancement of sentence based on prior adult convictions or prison terms. For the prosecutor to prove these special allegations, more specific information than that contained in the local police records must be obtained.

The responses on the extent to which the police provided juvenile histories were cross-tabulated with the extent to which the prosecutor sought his own information. One might have expected an inverse relationship: if the police provided little juvenile record information, the prosecutor would more frequently seek out his own. This turned out not to be the case, and the two measures turned out to be positively related ($\chi^2 = p < .05$): the more juvenile history information the police provided, the more information the prosecutor sought. On the other hand, when the police provided little information, the prosecutor sought little. This finding suggests that either the information is unavailable, legally restricted, or so poorly organized that it cannot be easily accessed by either the police or the prosecutor, or that such information—for whatever reason—is not deemed particularly important and therefore neither agency attempts to locate it.

By combining the information the prosecutor said the police provided with that obtained from all other sources, each jurisdiction was classified as to the overall amount of criminal history information usually available in cases involving young adult defendants. This measure of the overall extent of criminal record information becomes a primary dependent variable in later analysis. The percentage of responding jurisdictions falling into each category is given in Table 4.5.

Table 4.5

OVERALL EXTENT OF CRIMINAL HISTORY INFORMATION AVAILABLE TO THE PROSECUTOR

Extent of Information	Percent of Responding Jurisdictions in Each Category Pertaining to Juvenile History	 Pertaining to Adult History
No information (The police never bring criminal histories *and* prosecutor never obtains them)	14%	0%
Slight information (In "rare" instances the police *or* prosecutor gets local and/or statewide information. "Rarely" defined as less than 30 percent of cases)	27%	4%
Some information (The police *or* prosecutor "sometimes" gets local and/or statewide information. "Sometimes" defined as 31-69 percent of cases)	22%	24%
Moderate information (The police *or* prosecutor "usually" gets state and/or local information. "Usually" defined as 70-99 percent of cases)	34%	42%
Significant information (The police *or* prosecutor "always" gets state and/or local information)	1%	11%
Complete information (The police *and* prosecutor both get state *and* local information)	1%	18%

The data presented thus far have dealt with the amount of criminal history information used by the adult court, as well as the sources for that information. We found clear evidence of an information gap with respect to juvenile records in adult courts. Forty-one percent of the responding prosecutors indicated they never or rarely had knowledge of the juvenile histories of young adult felons they were prosecuting. The reader is reminded that we are not referring here to the juvenile records of all adult felons combined but to the juvenile records of those defendants just past the maximum age of juvenile court jurisdiction. On the contrary, the prosecutor would nearly always have knowledge of the adult criminal record. It appears that in some jurisdictions neither the police nor the prosecutor has the time, resources, or perhaps inclination to locate juvenile criminal histories.[11]

ASSESSING THE QUALITY OF JUVENILE RECORDS

Juvenile records have been criticized on several grounds: they are inadequate, unclear, incomplete, and difficult to access. Even when they can be accessed, they often arrive so late in the criminal proceedings as to be of little use. Two reasons contribute to poor juvenile records: the nature of the juvenile proceedings themselves, and the failure of criminal justice agencies to explicitly plan for the use of these records in adult proceedings. As to the first reason, delinquency proceedings differ from adult criminal proceedings in that the specific criminal acts of the juvenile are not the central issue. Technically the juvenile court is not concerned with whether the juvenile committed a robbery, burglary, or assault. The available sanctions (or treatments, if you prefer) are not contingent on the specific type of behavior. All the juvenile court must do is find the juvenile "delinquent." This leaves the final outcome of a juvenile delinquency hearing much more ambiguous as to what the court actually found to be true, in comparison to an adult conviction. Hence juvenile records, even when they contain dispositions, are inherently more ambiguous than adult records.

A second reason for the poor quality of juvenile records is that most jurisdictions have not made explicit provisions for their use in adult proceedings. The original image of the juvenile court as a child welfare agency left it unclear whether it was a court of record.[12] Since there is no established unified policy with respect to juvenile record-keeping, each agency is left to formulate its own local policies regarding the creation and dissemination of such materials. The serious deficiency of resources across juvenile justice does not encourage agencies to put much energy into developing record-keeping systems. Even when records exist, they are difficult to access by adult court personnel due to inadequate staffing and their often remote location.

To get a measure of the prosecutors' satisfaction with juvenile record systems with which they deal, we asked them to compare the juvenile and adult systems concerning the ease of access, timeliness, completeness, and clarity. This comparison also enabled us to determine whether the quality ratings (Table 4.7) were a reflection of the poor quality of records in general in a particular jurisdiction, or were unique with respect to juvenile records. Their responses are tabulated in Table 4.6. The responses indicate that the majority of prosecutors find their adult record system to be better than their juvenile system on each of the measures. This was particularly true on the ease of access and the completeness of statewide arrest information.

Although adult records were generally rated of higher quality than juvenile

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[11] Before proceeding, it should be noted that a least-squares linear multivariate regression model was used to analyze the effect of 15 selected independent variables upon the primary dependent variables—the extent of juvenile criminal history information shared with the prosecutor. As a result of this procedure, all 15 independent variables produced an R^2 of .548 upon the dependent variables, with an F-value of 2.2 at .05 probability level of significance. This analytic technique was used primarily as a means of exploring relationships in the data base. The nature of the data was such that it was deemed more appropriate to use cross-tabulations as opposed to this more sophisticated technique.

[12] Lemert (1969), op. cit., p. 356.

Table 4.6

COMPARISON OF THE QUALITY OF JUVENILE AND ADULT RECORDS

	Percent of Respondents Rating Records as				
Quality Item	Adult Much Better than Juvenile	Adult Somewhat Better than Juvenile	Adult and Juvenile the Same	Adult Somewhat Worse than Juvenile	Adult Much Worse than Juvenile
Ease of access	74	15	10	2	-
Timeliness with which you receive it	57	28	13	-	2
Completeness of local arrest information	53	24	21	3	-
Completeness of statewide arrest information	66	18	13	2	2
Clarity of local final disposition information	47	26	25	2	-
Clarity of statewide final disposition information	52	29	15	3	2

ones, it is somewhat surprising that adult records were rated as poorly as they were. Adult records do not fare well, even though they have been the subject of more management and computerization. For example, only 47 percent of the respondents said the clarity of adult local dispositions was "much better" than the local dispositions on juvenile records. We expected the adult record ratings to be substantially higher than juvenile record ratings in every aspect. Further examination of the responses showed that the quality of records varied as much between jurisdictions as it did between juvenile and adult records (except in terms of accessibility, where juvenile records were judged less accessible across jurisdictions).

The respondents were also asked to rate the absolute quality of their juvenile records along the same characteristics. The responses in Table 4.7[13] show that the majority of prosecutors (one-half to three-fourths) judge the juvenile records they receive fair to poor in most respects. More than 60 percent of those who receive statewide information judged it poor in terms of completeness and clarity. Local information is better, although about half of the respondents felt their local arrest information was incomplete and the dispositions unclear. Previously we had shown that few prosecutors received statewide information; these results suggest that even if such information is received, the prosecutor feels that it is incomplete and unclear.

Not all jurisdictions rated juvenile records poorly. Six jurisdictions rated their juvenile records as "excellent" in all of the aspects listed in Table 4.7, and twelve

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[13] Only respondents who receive some juvenile record information were instructed to rate its quality.

Table 4.7

PROSECUTORS' ASSESSMENT OF QUALITY OF JUVENILE RECORD INFORMATION

Quality Item	Percent of Respondents Rating Information as			
	Excellent	Good	Fair	Poor
Ease of access	14	21	26	38
Timeliness with which you receive it	9	22	32	36
Completeness of local arrest information	13	30	27	30
Completeness of statewide arrest information[a]	4	10	24	62
Clarity of local final disposition information	21	19	26	34
Clarity of statewide final disposition information[a]	6	10	20	63

[a] Only those who received statewide information answered this question.

jurisdictions rated their records as either good or excellent in each aspect. These jurisdictions were more likely than others to have

- Rather complete information from the police prior to the preliminary hearing.
- No legal restrictions governing the fingerprinting and photographing of juveniles.
- Few legal restrictions governing maintenance and access of juvenile records.
- A formal Career Criminal Prosecution Program in operation.
- Pre-sentence investigation reports which include complete juvenile record information (arrests and dispositions).
- Juvenile records stored in a central place, making them easy to retrieve.

POINT IN THE PROCEEDINGS WHEN JUVENILE RECORDS BECOME KNOWN

If a defendant's criminal history is not known early in the proceedings it cannot affect early prosecutorial decisionmaking, e.g., decisions as to whether to file criminal charges, which charges to file, whether to go to trial, what the disposition should be if the case does not go to trial, etc. It has been argued that such important decisions should be based on complete knowledge of the defendant's prior record, both juvenile and adult.[14] However, we suspect that such is not the case, given the difficulties associated with obtaining prior records.

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[14] For example, see Mark H. Moore, James Q. Wilson, and Ralph Gants, "Violent Attacks and Chronic Offenders: A Proposal for Concentrating the Resources of New York's Criminal Justice System on the 'Hard-Core' Crime Problem," New York State Assembly, 1978.

Each prosecutor was asked whether he was likely to have the defendant's juvenile and adult criminal record at different stages of the proceedings. Again, we wanted this information for cases specifically involving persons just past the maximum age of legal majority. Table 4.8, which shows the percentage of respondents who said they would not have prior record information at the particular point in the proceeding, is informative in several respects. Importantly, it shows that juvenile record information often arrives quite late in criminal proceedings. Seventy-eight percent of the prosecutors report not having a defendant's juvenile record at the time charges are filed, and 72 percent still do not have such information by the time of the preliminary hearing. Almost half of the respondents do not have information on a defendant's juvenile record at the time of pre-trial negotiations, and a full 23 percent move through sentencing without such information.

Table 4.8

KNOWLEDGE OF CRIMINAL RECORD BY POINT IN PROCEEDINGS

	Percent of Respondents Who Would *Not* Have Knowledge of	
Point in Proceedings	Juvenile Criminal History	Adult Criminal History
At bail hearings	96	80
When filing charges	78	55
At preliminary hearing	72	44
Pretrial negotiations	45	16
Sentencing	23	0

Information on the defendant's adult criminal history is more timely, although half of the prosecutors have no information concerning the adult record until after they have made the decision as to the filing of charges.

PERCEIVED EFFECT OF JUVENILE RECORDS ON ADULT PROSECUTION

In other chapters we have examined data in an attempt to understand how a juvenile record affects sanction severity, and we have theorized about why the presence of a juvenile record may or may not influence adult decisionmaking. We now turn our attention to the prosecutors' opinions of the impact of a juvenile prior record, as opposed to an adult one, on case disposition.

Each prosecutor was told to "consider the hypothetical case of a 19-year-old male arrested for a daytime residential burglary. In one instance, this is the arrestee's first adult arrest, but his juvenile record reveals two prior adjudications for burglary. In the second instance, the arrestee's record reveals a prior adult burglary conviction (no information on his juvenile record)." The prosecutor was then asked: "What impact would the presence of the juvenile record have on disposition decisions in your jurisdictions? What impact would the presence of the adult record have on disposition decisions in your jurisdictions?" The percentage of respondents who said the presence of a prior record would have a significant effect (as opposed to no or slight effect) is shown in Table 4.9.

Each decision is affected by the presence of an adult record, more so than a juvenile record. The decisions least affected by a prior record, whether juvenile or adult, have to do with pre-filing decisions, such as the level of bail or whether to release the defendant on his own recognizance. Only 53 percent of the prosecutors say that knowledge of a defendant's juvenile history would be used in determining final sentence severity, whereas 87 percent say a prior adult record will affect sentence severity. This appears to support the notion that defendants start over on the "ladder of dispositions"—not only because the adult court does not know their record, but even when known, there is a tradition of not weighting such records similarly.

Whether or not these results are surprising depends on your perspective. Clearly, we expect juvenile records to have a lesser effect than adult records, as they seem to. If you believe that juvenile adjudications are not criminal, then you may be disturbed by the high percentage of prosecutors (60-70 percent) who say that juvenile records would affect decisions such as dismissal or plea bargaining. If you believe the juvenile records should be used, but suspected they were not, then you may be somewhat satisfied. On the other hand, if you have listened to prosecutors fault other parts of the criminal justice system for failing to act in a manner consistent with the objectives of crime control, then you may be surprised that so many prosecutors discount juvenile records in making their decisions.

Table 4.9

EFFECT OF PRIOR RECORD ON PROSECUTORIAL DECISIONMAKING

	Percent of Respondents Replying Prior Record Would Have "Significant Effect"	
Prosecutor Decisions	Juvenile Record	Adult Record
Chances of diversion	71	87
Chances of dismissal	62	75
Level of bail	37	53
Chances for release on his own recognizance	31	55
Chances for concessions in plea bargaining	63	86
Final sentence severity	53	87

CHARACTERISTICS OF INFORMATION-SHARING JURISDICTIONS

Our survey revealed great variation among jurisdictions in the extent and quality of juvenile information shared, as well as the degree to which the prosecutor says such information affects decisionmaking. Some jurisdictions received no juvenile information from the police, and sought none themselves; others received complete information and utilized such information at each stage in defendant processing. In this section our interest is in the factors associated with variations in information-sharing. Such factors include the legal age of maximum court jurisdictions, the extent of statutory restrictions, the size of the jurisdiction, and the extent of administrative problems. We also explore the association between the amount of information, its quality, and use. We regard this analysis as exploratory, given the small sample size and the nature of the data.

The Impact of Legal Restrictions on Information-Sharing

The juvenile proceeding is civil rather than criminal, and no taint of criminality is supposed to be attached to any juvenile court finding. In this vein, numerous laws have been established to govern the manner in which juvenile records are created, maintained, and disseminated. Statutes pertaining to juvenile records for the most part are not intended to limit prosecutorial access to juvenile records directly. It is conceivable, however, that specific statutes might have indirect impacts on information-sharing between the juvenile and adult courts. We explored the relationships between information-sharing and (1) confidentiality statutes, (2) expungement statutes, and (3) statutes limiting the fingerprinting and photographing of juveniles.[15] These statutes are briefly outlined below. A more complete discussion is contained in Appendix A.

Confidentiality of Juvenile Records. As previously mentioned, juvenile court records are "confidential" by statute in nearly every state, and the statutory provisions for privacy include police juvenile records in more than one-half of the states. While probation department juvenile records are usually not mentioned explicitly in such statutes, one would expect them to be handled with restrictions similar to court records; in fact, many of the documents produced by probation departments in juvenile cases are incorporated in the juvenile court records. However, because of ample exceptions included in the confidentiality statutes, we expect the effect is to achieve confidentiality relative to the private sector, i.e., the media and the public, but much less than confidentiality relative to law enforcement and criminal justice. It is not obvious how these restrictions might affect prosecutorial access to such information; however, it may be that these restrictions inhibit systematic record-keeping or encourage the maintenance of lower quality records.

Expungement and Sealing of Juvenile Records. Only eighteen states[16] lack statutory provisions for sealing or expungement of juvenile court records.[17] In two states (Alaska and Montana) sealing is mandatory when the juvenile reaches 18 years (or leaves the juvenile court's jurisdiction if it extends beyond the 18th birthday). Sealing or expungement is discretionary in the remainder. Whether this action requires the juvenile's petition, the court's motion alone, or both, varies from state to state. In most discretionary states there is a waiting period which must be free of known offenses before juvenile court records are eligible for sealing or purging. This period, typically two years or more, may be measured relative to a specified age, to the date of the most recent adjudication, to the date when court jurisdiction terminated, or otherwise.

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[15] Our statutory information was drawn from two published reviews of legal codes governing juvenile delinquency proceedings: Austin et al. (1977), op. cit., and Mark M. Levin and Rosemary C. Sarri, *Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States*, National Assessment of Juvenile Corrections, University of Michigan, Ann Arbor, 1974.

[16] Alabama, Arkansas, Hawaii, Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia, and Wisconsin.

[17] This information on sealing or expungement is drawn from Austin (1977), op. cit. Also, see the review of case law given in *71 ALR3d* 753, "Expungement of Juvenile Records."

Statutory provisions for the sealing or expungement of the juvenile (criminal) records of law enforcement agencies or probation departments are generally not given independently, but rather as adjuncts to the juvenile court record provisions. Even where such explicit statutory mandates are lacking, one would expect the juvenile court's sealing or expungement order to be generally respected by other agencies possessing the affected parts of the juvenile's record. However, studies have shown that such orders may be far from effectual—statutory provisions or not—beyond the court's own files.[18]

The Ability of the Police to Fingerprint or Photograph Juvenile Arrestees. The photographing and fingerprinting of juveniles have been matters of continuing controversy, for they have been regarded as strongly stigmatizing. At the same time, the need for positive identifications in both juvenile and criminal justice is unquestionably vital. Statutory regulation of juvenile fingerprinting and photography is uneven, with 49 percent of our jurisdictions having no statutory restrictions on the fingerprinting and photographing of juveniles.[19] Only a few states limit the fingerprinting of juveniles and provide for the expungement of the fingerprint records.

In addition to the statutory information, the survey asked prosecutors: "Are there any legal restrictions on your access to the juvenile records of young adult felony defendants prior to their conviction?" If they responded in the affirmative, they were asked what types of records were restricted. Sixty-three percent of the prosecutors indicated some records were restricted to them. Of those who said records were restricted, 53 percent said police files were restricted, 67 percent said probation department juvenile files, and 95 percent said juvenile court records.

Our analysis examined the amount, quality, and use of juvenile information the prosecutor receives in light of the above statutory restrictions. Our findings are perhaps contrary to expectations:

We found no evidence that the presence of any of these legal restrictions was related to the amount of information shared. None of these restrictions were related to the type of juvenile data received (i.e., state or local) or the frequency with which the police brought the prosecutor juvenile records; or the extent to which the prosecutor sought juvenile records.

Further, there was no evidence that the presence of any of these restrictions affected the manner in which the prosecutor used juvenile records in making

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[18] See the discussion of the weakness of expungement procedures in Lemert, op. cit., pp. 382-383. See also Baum (1965), op. cit.; and Kogan and Loughery (1970), op. cit.

[19] See Levin and Sarri (1974), op. cit. A more recent source, the Commentary to the *Standards* (1978, p. 145), states: "For the most part, the twenty-three states that have recently passed legislation regulating the fingerprinting and photographing of juveniles have included standards that are somewhat more restrictive than adult practices. Illinois . . . prohibits police from forwarding juvenile prints and photos to the F.B.I. and to the central state depository; South Carolina . . . prohibits the fingerprinting and photographing of juveniles without judicial consent; and Florida limits fingerprinting and photographing to felony cases, limits access to police, the juvenile court, and the juvenile, and requires destruction of such records at age twenty-one."

decisions about adults. Even the extent to which the prosecutor himself reported being legally restricted from access to certain types of juvenile records was unrelated to the extent of information used or the effect of such information on his decisions. A majority of the prosecutors reported being restricted from using juvenile court records; but these persons appear to rely on police and probation records instead.

We did find, however, *that the presence of these legal restrictions was related to the prosecutor's assessment of juvenile record quality: The greater the legal restrictions, the lower the quality of the juvenile records.* For example, prosecutors were more likely to rate the juvenile records as being incomplete or inaccurate in jurisdictions where the police were not permitted to photograph or fingerprint juveniles.

These findings on the relationship between legal restrictions and the extent, quality, and use of juvenile records have a number of implications. It may be that violent crimes by youths have created pressure for information regarding juvenile records, so that while a number of legal procedures that limit this information are theoretically available, in practice this legal machine has little effect, and the effects it has produced may not be in the desired direction. Such statutes may be reducing the quality rather than the quantity of the information.

Our finding that prosecutors rely heavily on police and probation records for juvenile history information is of some concern. What type of information do such reports contain? The subject of the contents of these reports is extremely important because virtually all juveniles who come into contact with the police may have police records. In some jurisdictions records are made (complete with mug shots) and maintained on even those juveniles "picked up" by police and released without further action.

One danger in using these police records is that they do not always accurately reflect the minor's conduct. A former Los Angeles judge recently described a case involving a 14-year-old youth whom the police charged with child molesting because he kissed his 13-year-old girl friend in public. The boy was simply reprimanded and sent home, but the arrest record labeled him a child molester, and was part of his social profile for the rest of his life.[20] The potential for the misuse of police record information is great.

Similar problems can be found in probation reports, which list every contact a minor has had with the police. A list of numerous contacts on a youth's record is likely to create a strong bias against him. Yet a contact may not even mean an arrest, and even an arrest may not have resulted in conviction. If the matter never proceeded to trial, theoretically the minor has been cleared. But the inference that will be made by most is that "where there's smoke, there's fire."[21]

Our belief, based on these limited data, is that the law does not seriously affect the prosecutors' access to juvenile records; however, it may affect the records' quality. The result may be that prosecutors rely heavily on what may be incomplete or misleading information.

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[20] Joseph N. Sorrentino, *The Concrete Cradle: An Exploration of Juvenile Crime—Its Causes and Cures*, Wollstonecraft Incorporated, Los Angeles, 1975.

[21] On this particular question, the appellate court ruled in *People v. Calloway* that a juvenile court may not consider a youth's police record in passing sentence.

Relationship Between Jurisdictional Age and Information-Sharing

It is quite possible that the legal age of maximum juvenile court jurisdiction influences information-sharing. If the adult court assumes jurisdiction at age 16, as opposed to age 18, the pressure for information about a juvenile's activities may be lessened simply because a larger fraction of his or her criminal career is recorded in adult records. In a sense, the adult court may perceive little need to find out about previous activities. We examine this hypothesis below.

The maximum age of juvenile court jurisdiction for our sample closely approximates the national situation (see Table 4.10). In analyzing variations in information-sharing by age of jurisdiction, we found that the extent of information-sharing increased as the age of maximum juvenile court jurisdiction increased. The police provided juvenile records to the prosecutor earlier and more often in jurisdictions where the maximum age of juvenile court jurisdictional age was 17 ($\chi^2 = p < .05$). This point is illustrated in Table 4.11 with a cross-tabulation of jurisdictional age by the point in the proceedings when a prosecutor becomes aware of the defendant's juvenile record. These findings must be regarded as tentative, since there were too few jurisdictions with a 15-year-old maximum jurisdictional age to permit statistical analysis.

Table 4.10

MAXIMUM AGE OF JUVENILE COURT JURISDICTION

Maximum Age of Juvenile Court Jurisdiction	Percent of All States[a]	Percent of Rand Sample
15	8	12
16	16	20
17	75	68
18	2	0

[a] Austin et al.

Table 4.11

POINT IN PROCEEDINGS WHEN JUVENILE RECORD IS KNOWN, BY AGE OF JUVENILE COURT JURISDICTION

	Percent[a] of Respondents Who Would Know About Juvenile Record					
Age of Jurisdiction	At Bail Hearing	When Filing Charges	At Preliminary Hearing	Pre-Trial Negotiations	Sentencing	Never
15 (n = 8)	25	37	37	50	50	50
16 (n = 16)	7	27	27	67	80	20
17 (n = 48)	0	19	27	52	81	18

[a] Cumulative percentages.

The maximum age of juvenile court jurisdiction was not related to either the quality of juvenile records or the prosecutors' ratings of how juvenile records influenced their decisionmaking. We had expected that prosecutors in jurisdictions with a higher age of majority would use juvenile record information more. Logically, they should feel more confident about relying on information that pertains to a larger part of the defendant's criminal career. However, there was no support for this contention, and in fact, the data suggested the opposite direction. That is, prosecutors in age 15 and 16 jurisdictions were *more* likely to say that juvenile records had a "significant effect" on each of their decisions (from diversion through sentencing). This finding is consistent with data presented earlier in this report which suggest that regardless of the legal distinctions, persons are treated as juveniles through age 18.

Administrative Problems and Information-Sharing

Most of the responding prosecutors reported serious administrative problems which hindered their access to juvenile records. Some said they had insufficient manpower to locate past criminal histories; others had problems in actually locating the records. The records were often not centrally stored, and even if the location of the records was obvious, they were still not easy to retrieve. A significant number of prosecutors (38 percent) also felt that lack of cooperation from other criminal justice agencies hampered their access. Prosecutors who reported these problems were less likely to search for additional juvenile history information and more likely to rely on information in the police investigation report. Although these administrative problems were statistically related to the extent and type of juvenile information in a jurisdiction, there was no relationship between these problems and the degree to which the prosecutor used juvenile record information in his decisionmaking. It appears that administrative problems significantly affect the extent and type of information prosecutors have access to, but that regardless of these factors they use the information similarly. This suggests that these administrative problems encourage prosecutors to use less than complete juvenile histories, but that they use them, nonetheless.

Size of Jurisdiction and Information-Sharing

Each of the responding jurisdictions was classified as a small, medium, or large jurisdiction based on the number of felony cases it handled per year.[22] We then examined the relationship between size of jurisdiction and the various aspects of information-sharing.

It is not obvious how jurisdiction size affects information-sharing, but we might hypothesize that larger jurisdictions have higher levels of crime[23] and thus have a greater need to utilize complete criminal history information. On the other hand, because larger jurisdictions are more likely to be plagued with more serious congestion the records kept and disseminated may be more incomplete. Smaller jurisdictions may have a more manageable task in creating and disseminating juvenile record information. *We found no association between size of jurisdiction and the extent or type of juvenile records the police brought to the prosecutors, or the prosecutors sought out themselves.* Smaller offices were just as likely to receive and solicit juvenile histories as the larger offices. However, we did find significant differences with respect to the size of jurisdiction and the extent to which the prosecutor said juvenile histories had a significant impact on decisionmaking. The larger the jurisdiction, the more likely the prosecutor was to use juvenile histories at every stage of adult processing ($\chi^2 = p < .05$). It may be that with a more serious crime problem, the prosecutor uses all available information and is less likely to be influenced by other competing theories.

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[22] Small offices processed fewer than 2000 felony cases per year (41 percent of the jurisdictions); medium offices processed between 2001-5999 cases per year (38 percent); and larger offices processed more than 6000 felony cases per year (21 percent).

The Presence of a Career Criminal Prosecution Program

Forty-five of the seventy-one jurisdictions reported having a career criminal prosecution program.[24] The presence of a career criminal prosecution unit would undoubtedly influence the prosecutor's awareness of the defendant's adult criminal history, information that is used in deciding whether an arrestee will be considered a "career criminal" for prosecution purposes. However, whether such a program also encourages the sharing of juvenile records was not known. We found a greater amount of information-sharing between the juvenile and adult courts in career criminal jurisdictions. Only 2 percent of the career criminal jurisdictions said they did not know a defendant's juvenile record at some point in the proceedings, while this was true for approximately 30 percent of the non-career criminal jurisdictions. Career criminal jurisdictions also reported using juvenile records more at each stage in the adult criminal proceedings ($\chi^2 = p < .005$).

It is likely that as career criminal prosecution programs continue to expand, adult and juvenile records will be used more often in adult prosecution. The presence of a career criminal prosecution program is currently an innovative practice. Jurisdictions that have elected to become part of the "experiment" are undoubtedly more progressive than jurisdictions in general. As the career criminal prosecution program expands, the innovativeness of the joining offices will be less than that of the original offices, so that the use of juvenile records may not be as strongly correlated with the presence of career criminal programs as was evidenced in our survey. However, as these programs expand, there will be a trend toward using all types of criminal history information, unless there is a public outcry to the contrary.

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[23] There was a positive correlation between the size of the office (i.e., number of prosecutors) and the violent crime rate for the county in which the district attorney was located.

[24] A career criminal prosecution unit sets aside a group of prosecutors exclusively for the prosecution of defendants with serious prior criminal records. See J. Petersilia, *Targeting Career Criminals: A Developing Criminal Justice Strategy,* The Rand Corporation, P-6173, 1978.

The Presence of Computerized Juvenile Record-Keeping Systems

Approximately 20 percent of the jurisdictions reported some type of juvenile computerized record-keeping systems on the local or county level, and 8 percent of the jurisdictions reported a statewide juvenile computerized system. However, the presence of a computerized system was not statistically related to the prosecutor's assessment of the quality or amount of information he received, or the effect of such information on case dispositions.

SUMMARY AND CONCLUSIONS

It is clear from this survey that very few jurisdictions have uniform information-sharing policies between the juvenile and adult components in the criminal justice system. Less than a third of the jurisdictions report "always" or "never" having juvenile information. The vast majority of jurisdictions receive juvenile record information sporadically—when the police officer has personal knowledge of the defendant's background, or when the crime is particularly serious. Prosecutors and police report few formal directives in this area. Information-sharing is primarily the result of local policy, subject to the whims of the police, prosecutor, and probation officer. These results will be differently interpreted depending on one's perspectives—some will find the glass half empty while others will judge it half full. We recapitulate our main findings below.

- Nearly half of the adult prosecutors responding to the survey reported receiving little or no juvenile record information on young adult felony defendants in their jurisdiction. When juvenile records were available, they nearly always referred to local rather than statewide arrests and dispositions. When statewide information was available, the prosecutor rarely used it because he judged the information difficult to interpret and incomplete.
- Key prosecutorial decisions are made concerning young adult felons without knowledge of their juvenile histories. Even when the prosecutor obtains information, it often arrives so late in the proceedings as to have little effect on early decisionmaking, such as whether to file charges or which charges to file. By the point of the preliminary hearing, only 28 percent of the prosecutors said they were likely to have knowledge of the young defendant's juvenile record (56 percent would have knowledge of the adult record).
- If prosecutors had fuller knowledge of a young adult's juvenile history, they would not hesitate to use it in most aspects of case disposition, although an adult record would carry more weight. Forty-four percent of those jurisdictions who currently receive only slight juvenile record information said such information would have a significant effect on their decisions if it were available. Knowledge of the juvenile record would not profoundly affect decisions regarding bail, but would affect the chances of diversion, dismissal, and plea bargaining. However, knowledge of the juve-

nile record was seen as less important in reaching a decision on final sentence severity.

- The extent of statutory restrictions appeared unrelated to the amount of information shared, or the impact of such information on decisionmaking (e.g., existence of confidentiality statutes, expungement and sealing statutes, ability of police to fingerprint and photograph juveniles). However, there was a relationship between statutory restrictions and the assessed quality of the information: the more the restrictions, the more the prosecutor complained about the quality.
- The prosecutor's opinion of the quality of juvenile record information was not related to the extent to which it was used in deciding case dispositions.
- Prosecutors judged probation records the most accurate, although police records were used most often. An examination of these police records revealed that in many instances dispositions were not reported.
- The age of maximum juvenile court jurisdiction was associated with the amount of information shared: our preliminary finding is that as information-sharing increased, the age of maximum jurisdiction increased. If the adult court assumes jurisdiction at age 18 as opposed to 16, the pressure to obtain information from the juvenile court may be heightened because the activities of ages 15-16 are deemed important.
- We found no association in our data between the size of the prosecutor's office and the extent or quality of information shared between the juvenile and adult courts. However, larger jurisdictions (with higher crime rates) reported that juvenile histories were more likely to significantly affect each stage of adult decisionmaking.
- The presence of a career criminal prosecution program is associated with the sharing of both adult and juvenile criminal histories.
- The presence of computerized, as opposed to manual, information systems does not appear to increase the amount, quality, or use of the juvenile record information by the prosecutor at the present time. We suspect, however, that over time, computerization will increase the sharing of juvenile and adult criminal histories.

At this point it is unclear as to whether the middle ground most prosecutors claim to be in, regarding access to juvenile records, is the result of self-conscious policy decisions or accident. It could be that police and prosecutors only go to the extra effort of reviewing juvenile records in those marginal cases where the record will make a difference. It could be that the records are randomly distributed and represent no conscious selectivity at all. We cannot resolve that question by asking prosecutors alone, since they are strongly motivated to see some rational basis behind the patterns of access with which they must contend.

V. CONCLUSIONS AND IMPLICATIONS

This study has been a small pilot effort to explore the largely uncharted territory of how youthful offenders—ages 16 to 21—are treated during that time period in which legal responsibility for responding to criminal behavior shifts from the juvenile to the adult court. For this age group we find: wide variability in procedures and policy among jurisdictions; no systematic articulation of the reasoning behind these different policy choices; a dearth of data concerning what actually happens within the different systems; and inaccurate representation of the current situation based on misleading aggregate data.

Our research method was opportunistic. We relied on a national survey of prosecutors and existing data sets to explore disposition patterns for offenders in the age range of interest. Los Angeles County, Franklin County, Ohio, and New York City were the only major urban areas we could find where such data were readily accessible.[1] Only in California were these data available through official agencies. In the other two sites we had to rely on data collected by other research projects. This fact alone says something important about the empirical vacuum in which the policy debate takes place concerning what many see to be one of the highest priority topics in criminal justice—the appropriate disposition for serious youthful offenders.

In retrospect, we learned more than we had hoped. Unfortunately, we also found the factors affecting youthful disposition policy more complicated than we had suspected. Our findings come primarily from limited data in only three sites (plus the survey). They do not even cover the full spectrum of criminal behavior with which the public is concerned. Nevertheless, these data provide a first glimpse of how things actually work and indicate what steps are required if we want to learn more.

AGE AND CRIME

We conclude from our review of other studies that late adolescence and early adulthood, the age range from 16 to 21 in which the legal responsibility for dealing with criminal behavior shifts from the juvenile to the adult court, are critical years in terms of criminality. Most serious adult offenders, particularly those with long careers of sustained involvement in serious crime, are in contact with the system at this time. The frequency of criminal acts for individuals—their offense rate—appears to decline with age (although the evidence on this phenomenon is far from conclusive).

However, the data for analyzing this issue are grossly inadequate. Studies of criminal careers, using either survey or arrest histories, have not tracked offenders accurately prior to age 18. Arrest statistics appear to overestimate the participation of youths in street crime because of a positive association between age and offense seriousness. The use of gross offense labels such as burglary, robbery, or assault in categorizing the behavior for which individuals are arrested inflates the number of estimated youthful offenders because of their more frequent involvement in trivial behavior to which these labels can technically be applied and because of their greater tendency toward group crime.

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[1] The PROMIS data file assembled for the District of Columbia by the Institute for Law and Social Research would also have been appropriate for this analysis, but it had already been examined by Zimring. Those results are described in our Chapter III.

We simply do not know, within very wide margins of error, what proportion of serious street crime is attributable to youthful offenders, or how the severity of juvenile sanctions compares to that of adult sanctions. We will never know until we examine the offenders' recorded crimes at a much finer level of detail than current record systems presently allow.

USE OF JUVENILE RECORDS

From our survey of prosecutors we conclude that there is considerable variation in the extent to which different jurisdictions have access to and make use of juvenile criminal history information in adult criminal proceedings. Much of the observed variation appears unrelated to the formal legal restrictions placed on the use of such data by state law. Rather, it appears to come from differences in local policy and circumstances—such as the quality of local record systems and the persistence with which the police, prosecutor, and court personnel attempt to get the records. Except in the very few jurisdictions that have and enforce blanket proscriptions on access to juvenile data, legal restrictions appear to systematically affect only the *quality* of juvenile record information—primarily its completeness in terms of non-local arrests and dispositions; not its degree of use or predicted effects, at least according to prosecutors. In other words, efforts to restrict access to juvenile records may cause the adult courts to use more problematic data than they would if the restrictions were not in effect. This would not be the first instance of juvenile law in which good intentions lead to bad effects.

FACTORS ASSOCIATED WITH JUVENILE RECORD USE

Not surprisingly, given the commonly shared interests of prosecutors in concentrating on the worst offenders, the use of juvenile record data does appear to be related to a number of other system characteristics, across jurisdictions, in a predictable way. The longer the juvenile system retains jurisdiction—up to age 18 rather than 16, for instance—the greater the interest of the adult system in what the juvenile record contains and the more likely the system is to obtain it. Prosecutors who have established career criminal prosecution units, as a means of focusing their priorities, are more likely to seek better access to criminal history information, both juvenile and adult, than those who have not adopted such units. Also, those prosecutors with greater access to juvenile records are more likely to predict some effects on disposition patterns from the use of those records.

DISPOSITION PATTERNS AND AGE

Our analysis of case disposition patterns disclosed a wide degree of variation among the three sites, in both absolute comparisons between offenders of the same age across sites and in the relative severity with which offenders of different ages are treated within sites. There are also unique age patterns within specific crime types. We can propose hypotheses that would explain some of these variations; most of them we cannot explain at this time.

THE NEED TO MEASURE AGE-SPECIFIC SANCTIONS

Any systematic discussion of sanction policy must begin with the behavior for which the individual is to be sanctioned. It is the criminal act that invokes the risk of sanctions—not the arrest. In comparing sanction policy across different types of individuals we must determine the likelihood that a specific type of criminal behavior will result in sanction—i.e., arrest, conviction, etc. If we begin with arrests, and ignore the fact that different groups may be systematically subject to different probabilities of arrest, we are beginning with a false premise.

The available literature suggests that within any arrest crime category, the more youthful offenders will have been involved, on the average, in less serious forms of behavior and appear less of a community crime risk when they appear in court. This situation is caused by a number of related phenomena.

First, as a matter of public order management strategy, police officers are more likely to arrest youthful offenders for marginal forms of criminal behavior as a way of exerting social control. Second, within any specific crime category such as burglary or assault, the crimes of youthful offenders are more likely to tend toward the trivial end of the spectrum. Finally, youthful offenders are more likely than older adults to be involved in group behavior. A single assault or school break-in usually involves several youths, who can all be technically charged with the crime.

Therefore, any research that takes arrest labels at face value and determines the sanction pattern resulting from those labels is likely to misrepresent or distort the systematic effects of age on sanctions. To detect the true differences in age-specific sanction severity, one must begin with a careful coding of the specific behaviors involved (probably from arrest reports or witness statements) so that the analysis of resulting sanctions can begin with samples of offenders who are equal in terms of the crime involved.

This phenomenon is easily illustrated by an example. Suppose in Smallville there are 16 robberies during May, but only two result in an arrest. In one robbery Billy Smith (age 13) hits Johnny Jones (10) with his fist and takes a quarter. Johnny tells his mother, who tells the police and hence the arrest. Jimmy Brown, Billy Smith's good friend, is with Billy at the time of the robbery and at the time of arrest so he is arrested too.

In the other robbery resulting in an arrest, Sam Williams (28) pulls a knife on a transient and robs him of $14. A passing patrolman hears the transient yell and makes the arrest. Even though Fred, one of Sam's drinking buddies, is also in the alley at the time of the robbery, he is not arrested, since it is clear from the transient's story that Sam did it all by himself.

We have 16 robberies in Smallville in May, two of which are cleared by arrest. Three people are taken into custody: two juveniles (Jimmy and Billy) and one adult, Sam. Billy is released to his mother without any further action. Jimmy is referred to probation, which puts him on supervision for six months without filing a petition. Sam is arraigned and pleads guilty to the robbery and is given one year in the county jail.

If researchers want to know what percentage of Smallville's robberies are caused by juveniles they may look at what fraction of robbery arrestees are juveniles—two-thirds, a grossly misleading statistic. If they want to compare the severity of juvenile sanctions to adult sanctions they may examine the resulting dispositions from the three robbery arrests. Neither juvenile served any time while the adult got one year. Are adult sanctions much tougher?

This simple example illustrates the erroneous inferences that can be made from official records unless careful quality controls on offense seriousness are used. Any study of disposition patterns by age, for youthful age groups, must use such controls, since the nature of the crimes an individual is capable of changes so rapidly during this age range.

Now suppose we are interested in the effects of sanctions on crime. One measure of sanction severity frequently used is the incarcerations per crime—in this example it is 1/16. Suppose in another town of the same size (Town B) there are exactly the same number and kind of robberies and exactly the same number of arrests of the same type of offenders (i.e., the two towns are exactly alike up through the point of arrest). But when it comes to disposition, the adult in Town B is given probation but the two boys are both held in juvenile hall for a week. How should we compare the severity of sanctions between these towns? If we lump all age groups together and exclude juvenile incarcerations (as is usually the case in deterrence studies), the rate of incarceration in Town B is zero. If we include juvenile incarcerations, it is 2/16. The former method is not an accurate representation of the sanctions faced by juveniles, and the latter is not an accurate representation of the risk faced by adults. Neither one can lead to accurate inferences in a deterrence study.

Although this has been a hypothetical example, the trends that suggest it are documented in the literature. However, the magnitude and effects of these trends are not known. If we are to begin dealing systematically with age—as both a mediating variable in explaining the response of offenders to sanctions, and as an explicit variable in sanction policies themselves—we must begin measuring current sanction patterns by age, while controlling on offense seriousness.

GENERATING ALTERNATIVE EXPLANATIONS FOR AGE-RELATED SENTENCING DIFFERENCES IN CRIMINAL COURTS

If young offenders do receive differential leniency in criminal courts, the practice can stem from a number of different organizational and policy influences. Some of these policies concern the existence and function of juvenile court. Other policies are independent value choices that are unrelated to the dual system.

Juvenile Court Policies

Three separate policies emanating from the dual system might lead to differential leniency toward young adult offenders: (1) information gaps between juvenile and criminal courts; (2) a decision by criminal court decisionmakers to give less weight to prior juvenile court adjudications because the misdeed of "juveniles" should not count heavily against these offenders once they reach the criminal court system; and (3) a failure by criminal court decisionmakers to consider recidivism after juvenile court adjudication to be as fateful as recidivism after prior adult criminal court conviction.

Information Gaps. The existence of a juvenile court as a separate institution with separate recordkeeping, nomenclature, and philosophy can lead to discontinuities in sentencing when information is not shared. If juvenile arrest, court, and correctional records are unavailable in criminal court proceedings, every "new adult" who enters the criminal court system arrives with no basis for prosecutors or courts to consider his or her prior misdeeds in deciding on appropriate punishment.

Our survey of prosecutors disclosed that complete unavailability of juvenile records is the exception rather than the rule. Most jurisdictions fall into the middle ground of receiving some information, usually on juvenile arrests, in certain categories of cases. Nevertheless, the ambiguity inherent in juvenile records and the gaps in dispositional information may still result in significant sentencing discontinuities between the two systems.

Youthful Folly. Even if information on juvenile arrest, adjudication, and incarceration is available, the existence of a juvenile court and the label of "delinquency" rather than "crime" may lead criminal courts to conclude that juvenile offenses are not "real crimes," i.e., in the sense that their prior commission results in more punitive responses to crimes an offender commits after entering the criminal court jurisdiction. This policy would take the label of "delinquency" seriously. The juvenile court, however, makes an inquiry into prior conduct only with respect to the needs of the juvenile for treatment, and when "need" rather than fault is the basis for asserting juvenile court jurisdiction, the thesis is that an offender's history as a juvenile should not count against him in later criminal court proceedings, or should have significantly different weight in determining penal liability than prior "adult" convictions. This discounting of prior juvenile offenses, as compared to adult offenses, was evident in the responses to our survey of prosecutors. Most of them indicated that prior adult convictions would be weighed more heavily against an offender, at the time of sentencing, than comparable juvenile convictions.

Contempt of Court. The existence of two discrete systems to process young offenders may benefit young adults who do not have prior criminal court convictions because it may be the criminal court's policy to regard recidivism after prior adult conviction as a more serious indication of a need for incarceration than a first appearance in the criminal court after compiling a juvenile court record. High on the list of reasons for imprisonment in the United States is the offender's repeated failure to respond to previous sentencing options short of prison. Repeated failure on probation is a motive for imprisonment, particularly for property crimes. The criminal court policymaker may regard the offender's return to crime as a refusal to take advantage of the opportunity to reform previously extended by the court and as a contempt of the legal system. In this view, a return to crime after a lenient disposition is a form of "contempt of court" that triggers more serious penal sanctions. But if a defendant has been under the jurisdiction of the juvenile court and has never been extended a chance to reform after a criminal court conviction, the criminal court may give his offense less weight than if he or she had been under a criminal court probationary order at the time of the offense.

Thus each branch of the dual system for processing young offenders stands ready to extend at least an opportunity to succeed in the community before resorting to stronger sanctions for most offenses. The young adult offender crossing the border between juvenile and criminal court benefits to the extent that this new chance is available when he comes under the criminal court's jurisdiction.

Independent Age-Related Policies

Three criminal court policies that bear no direct relationship to the existence, jurisdictional age, or mission of the juvenile court may result in leniency toward young adult offenders:

1. Criminal courts may have special policies toward young offenders based on theories of diminished responsibility, different prospects for rehabilitation, or the avoidance of punitive labels. Such policies are based on age rather than on any particular view of juvenile courts or prior juvenile records.
2. Criminal courts may have policies extending lenient treatment toward all offenders with relatively short criminal records. Such policies benefit a disproportionate number of younger offenders because of their shorter periods at risk in juvenile and criminal courts.
3. Criminal court policies may benefit younger offenders by emphasizing the distribution of punishment to repeat or career offenders, who are defined in terms of their total number of serious law violations. These policies focus on older offenders who have had greater time at risk to accumulate such lengthy records.

Factors That May Aggravate Sanctions for Youth

In any jurisdiction, parts of the youth policy may counterbalance the preceding explanations for differential leniency. The principal cause is likely to be an intermingling of the objectives "to help" and "to punish." With very young offenders, society's objective is clearly "to help." With older offenders, society's objectives are predominantly becoming "to punish." Youthful offenders may be caught in between. In particular, special programs or special facilities designed to help youthful offenders may result in youthful offenders receiving what appear to be harsher sanctions. Judges may be willing to commit youthful offenders to special training institutions but not to prison. As with diversion programs, the development of less intrusive interventions may result in more frequent interventions.

Logically, these explanations for differential leniency are independent: it is possible that any single explanation could explain the totality of an observed pattern of differential leniency. In a real world context, it is more likely that the bases for leniency toward young offenders are overlapping, and some mixture of these considerations is at play in determining actual sanctioning patterns. However great the mixture of policies in the real world setting, there is still value to empirically specifying how different explanations of criminal court leniency toward the young would produce different patterns of sanctioning outcome in observable case samples.

EMPIRICAL APPROXIMATIONS OF ALTERNATIVE POLICY EXPLANATIONS FOR AGE-RELATED SENTENCING DIFFERENCES

Some differences in criminal court processing should serve as signals that the specific policies discussed in the preceding section are responsible for explaining age-related sentencing differences in criminal courts. This discussion, like that of the previous section, is divided into the "juvenile court" explanations and the policies that can exist independent of the juvenile court.

"Juvenile Court" Explanations

Cross-sectionally, age-related sentencing patterns that depend on the existence or policy of the juvenile court should persist longer in jurisdictions that have a higher maximum age of juvenile court jurisdiction. Thus, if state X receives offenders into its criminal courts on their 16th birthday and state Y receives offenders in the ordinary course of events at age 18, 18-year-olds should experience relatively greater degrees of leniency in state Y to the extent that it is a dual system rather than a policy toward youth or short-record offenders that explains age-related differences in sentencing. This is in fact the pattern we observed between Franklin County and New York City. The differential leniency afforded young adults was observed only during the first two years in the adult system. In Franklin County this period occurred two years later than it did in New York, matching exactly the differences in the maximum age of jurisdiction of their juvenile courts.

Information Gaps. Among jurisdictions, age-related sentencing differences that result from information gaps vary with the extent of juvenile court information available in criminal courts. Thus, in cross-jurisdictional comparisons, leniency should be greatest in jurisdictions where information is limited by law or practice. Leniency should be the least evident in jurisdictions where it is freely available. Moreover, to the extent that information gaps explain differential leniency, the seriousness of the instant crime should predict criminal court disposition while the seriousness of the juvenile record should have no predictive power. Under such circumstances, all similarly charged "new adult" burglars should be treated fairly homogeneously; those with serious juvenile offense records should receive approximately the same criminal court sanction as those without serious prior juvenile records.

In our case studies, differential leniency was much more pronounced in Franklin County than in Los Angeles. In categorizing these two jurisdictions regarding the degree to which juvenile record information is available in adult criminal proceedings, we found that Los Angeles was in the highest of three categories of availability and Franklin County was in the lowest. Therefore, their sentencing patterns are consistent with the "information gap" theories.[3]

Youthful Folly. Where juvenile court records are intentionally disregarded, prior juvenile offenses will play a smaller role than prior adult dispositions whether or not juvenile record information is available. Thus, age-related leniency should exist to the same extent in information-sharing and information gap regimes. In information-sharing systems, relatively long records of non-serious juvenile misdeeds would be particularly apt candidates for leniency; it appears less likely that adjudications for quite serious offense would be accorded similar latitude. Thus information-sharing jurisdictions and information gap jurisdictions might have the same policies toward juvenile property crime records, but the former might pay greater heed to cases involving unambiguously serious violent juvenile behavior, a poor candidate for characterization as "youthful folly." In individual information-sharing jurisdictions, long records of non-serious juvenile misconduct would be lightly regarded while violent juvenile histories would be considered (particularly if the instant offense involves violence). In jurisdictions where a pure form of the "youthful folly" theory is applied, prior dispositions in juvenile court remain relatively unimportant in sentencing dispositions even as the "new adult" acquires a criminal court record.

Contempt of Court. Where some variation of the "contempt of court" phenomenon is at work, prior juvenile record will be disregarded or given little weight when young adult offenders appear before criminal court judges on their first felony convictions. Thus, as is the case where juvenile misdeeds are discounted, jurisdictions with relatively rich information will tend to be as lenient—particularly with typical probation offenses—as systems with a high degree of information-sharing. To some extent, both the youthful folly and the contempt of court rationales would also predict that leniency will be clustered in the very early years of criminal court jurisdiction; thus, systems that initiate criminal court jurisdiction at age 16 should be showing less leniency toward 18-year-olds than systems that transfer jurisdiction at age 17 or 18.

The difference between the two explanations should appear in the contrast between the oldest cohort of juveniles and the youngest cohort of young adults with prior juvenile records. If criminal and juvenile courts both place emphasis on down-playing the seriousness of youthful misdeeds, then the leniency that results should be consistent in both juvenile and criminal courts. The "contempt" theory would predict some cases where the criminal court gives offenders probationary sentences which may be treated with less leniency by the juvenile court because it regards recidivism seriously and because its own good offices have been abused. This is exactly the pattern in evidence in Table 3.17, in which California prison inmates experienced less severe sanctions for minor felonies (less serious than burglary) as young adults than they did as juveniles.

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[3] The three New York prosecutors from whom we obtained responses indicated varying degrees of juvenile record availability. Since the Vera disposition data are from a merged sample, we do not know what information-sharing policies affected which cases.

Independent Explanations

1. Criminal Court Youth Policies. Across jurisdictions, patterns of age-related sentencing that exist independent of the existence or purpose of the juvenile court should not vary in direct relation to the jurisdictional age boundary between juvenile and criminal court. Thus, 18-year-olds in those jurisdictions where criminal court jurisdiction begins at age 16 should do almost as well on a charge-specific basis as 18-year-olds in 18th birthday states. To the extent that legal policy on the appropriate boundary between youth and adulthood is reflected in juvenile court jurisdictional age, there might be some confounding of social and legal attitudes toward youth with effects attributable to the juvenile court. However, there is little evidence that age boundaries between juvenile and criminal courts are that extensively thought out or that closely related to notions of youthfulness and maturity.

Criminal court policies protecting the young should apply with special force to 16- and 17-year-old offenders in those jurisdictions which consign them to criminal courts. If it is youth rather than prior juvenile court jurisdiction which is the controlling variable, 18- and 19-year-olds will receive roughly the same lenient treatment where they are the youngest age cohort in criminal court and where there are 16- and 17-year-olds also within criminal court jurisdiction.

The New York City disposition patterns appear to show some of this influence. The relative leniency shown to 16- and 17-year-olds is far greater than that experienced by 18- and 19-year-olds in Franklin County during their first two years in the adult system. New York appears to grant 16- and 17-year-olds the same concessions in adult court, including a low conviction rate for burglary, that 16- and 17-year-olds receive in states where they are still within the juvenile court jurisdiction.

2. Light Record and Career Criminal Policies. Where prior criminal record is a strong predictor of incarceration, either because of a career criminal focus or a policy of leniency for relatively light records, the number of prior adjudications that come to the attention of a sentencing court—whether juvenile or criminal—should predict sentencing outcome regardless of the offender's current age.

Factors That May Increase the Probability of Incarceration

To determine whether the availability of special treatment facilities for youth results in an increase in sanctions, it would be necessary to compare sites that are alike in all other respects. It would also be helpful to measure judges' perceptions of these special treatment facilities compared to regular prison commitment. The effects of this influence would show up in higher commitment rate among marginal offenders in those sites providing special options. An example of this factor at work is the much higher ratio of pre-adjudicatory detention, compared to post-adjudicatory detention, experienced by juveniles compared to adults.[3] This heavy use of pretrial confinement is invariably justified as a means of "treating" the juvenile's problems.

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[3] Zimring, *Confronting Youth Crime*, pp. 17, 50-52, in background paper.

A number of imperfect research strategies can be used to explore some of the hypotheses outlined above. At minimum, a large cohort of offenders with both juvenile and criminal record histories should be studied in a single jurisdiction, and comparative data on case processing should be obtained from a city with a high jurisdictional age and one with a low jurisdictional age. Additionally, comparative studies of information-sharing and noninformation-sharing systems should be possible once the extremes with respect to this variable are identified and verified.

EVALUATING PROPOSED REFORMS

Juvenile law reform has become a growth industry. Numerous changes to the traditional juvenile court model are being considered in many jurisdictions. These changes are supported by various coalitions whose aims include dealing more harshly with serious juvenile offenders; saving the traditional juvenile court process for less serious juvenile offenders; and introducing a more structured approach to juvenile sentencing, based on punishment rather than individualized treatment. Some specific changes include:

- Lowering the maximum age of jurisdiction of the juvenile court (from 18 to 16) for all criminal offenses; or only violent offenses. (Los Angeles County Probation has proposed the latter.)[4]
- Making juvenile proceedings and court records open to the public (Washington has adopted such a policy).
- Improving the access of the adult court to juvenile criminal history information, including dispositions (proposed by 20th Century Fund Task Force in *Confronting Youth Crime*).
- Requiring mandatory sentences for serious juvenile crime (New York has implemented).
- Providing for either a mandatory or presumptive waiver to adult court for juveniles charged with specified violent crimes (California is now presumptive; Los Angeles County Probation recommends that it be made mandatory).
- Eliminating the probation department from the screening process in filing juvenile petitions and having police bring their charges directly to the prosecutor (Los Angeles County Probation recommends this change).
- Formulating determinate sentencing or sentencing guidelines for juveniles (Washington has guidelines; Los Angeles Probation recommends this approach).
- Implementing juvenile career criminal prosecution (Kings County, Washington has implemented; Los Angeles Probation recommends this approach).
- Adopting the rule that once a juvenile has been waived to the adult court, all future criminal charges against him will be handled in adult court—i.e., once waived, always waived (Washington has adopted).

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[4] Los Angeles County Probation's proposed changes are contained in a memorandum from the Chief Probation Officer to the Board of Supervisors, dated February 1, 1980.

- Instituting a three-track system involving a family court for dependent, neglected, or very young offenders (under 14); a youthful offender court for the residual juvenile criminals (after the serious offenders of any age and the less serious offenders over 16 have been waived to adult court); and an adult court (New York has such a system and Los Angeles Probation recommends that it be adopted in California: the 20th Century Task Force specifically recommended against such a system).

It might prove helpful to those jurisdictions considering these reforms if we could predict the effect they are likely to have on disposition patterns. Unfortunately we are not in a position to do so; nor is anyone else. There is not even a clear picture of the problems these reforms are intended to solve.

What we have now are a number of policy experiments in which different clusters of these reforms are implemented in a variety of contextual settings, with no systematic data collection efforts underway to provide a basis for objectively evaluating the outcomes, let alone the starting point at which the experiments began. Unless some special research attention is forced on this topic, we are not likely to know what effect these reforms produce.

In summary, the current state of knowledge concerning youthful disposition practices does not place us in a position to predict what effects the organizational or procedural changes currently being recommended for the juvenile justice system will have on case disposition patterns. We know little about those patterns for the more serious forms of juvenile crime or the sentencing objectives that policymakers are striving to achieve. We know even less about the direction and magnitude of the influences of specific organizational and procedural differences on disposition patterns.

To develop this capability, additional case studies should be conducted to allow cross-sectional and temporal comparisons in greater detail than we found available anywhere but in Los Angeles (where the data resulted from our own coding efforts). The age of low cost, opportunistic sanction studies, concerning either the effects of specific policy factors on sanctions or the effects of sanctions on crime, appears to be over. They may provide interesting data. But carefully collected disposition data allowing for control on both age and offense seriousness provide the only way to rigorously investigate youth sanction policy, as our small sample of Los Angeles juvenile cases amply demonstrated.

Appendix A

EXISTENCE AND ACCESSIBILITY OF JUVENILE RECORDS FOR USE IN ADULT COURT: LEGAL ISSUES

by Marvin M. Lavin[*]

I. INTRODUCTION

This appendix presents a limited survey of materials and information related to the existence and accessibility of juvenile criminal records of young adult felony suspects. (For convenience, these records are herein termed *juvenile records post-age of majority* or simply *juvenile records/pm.*) Our attention here is on the young adult felony suspect;[1] our ultimate concern is with the role of his juvenile criminal history in his current criminal proceedings. Traditionally, the primary use of a juvenile record/pm in a criminal proceeding has been to assist the sentencing judge in his determination of an appropriate sentence. Less common has been its possible use by the prosecutor in determining the breadth and severity of charges to be filed and the nature of the plea agreement, if any, to be offered. Relatively uncommon has been its use by the prosecutor to prepare for trial; and, where legally allowed, to impeach the testimony of a defendant. This review examines a variety of legal and practical issues which might limit the availability and accessibility of juvenile records/pm.

The juvenile record/pm might be elicited from a variety of sources, for example: law enforcement agencies within the local jurisdiction (generally, the county); the probation department (or other agency to whom the law enforcement agencies transfer responsibility for an arrested juvenile offender) in the local jurisdiction; the local juvenile court system; agencies similar to the foregoing in other jurisdictions of the state; the state bureau of criminal identification and criminal history information; agencies in other states; federal criminal history information files at several levels; etc. Some source files purport to be "centralized"; others are not.

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[*] An attorney at The Rand Corporation.

[1] The term *young adult* refers to an individual whose age is within perhaps three or four years past the maximum age of juvenile court jurisdiction. The latter varies among jurisdictions, but is preponderately 17 years as is indicated by the following frequency distribution:

Maximum Age of Juvenile Court Jurisdiction in U.S.	Number of Jurisdictions	
15	4	(8%)
16	8	(16%)
17	38	(74%)
18	1	(2%)
	51	(100%)

These data are based on J. Austin, R. Levi, and P. J. Cook, *A Summary of State Legal Codes Governing Juvenile Delinquency Proceedings*, Center for the Study of Criminal Justice Policy, Duke University, July 1977. See also Samuel M. Davis, *Rights of Juveniles—The Juvenile Justice System* and *1978 Supplement*, Appendix B, Clark Boardman Co., Ltd., New York, 1974 (1978).

Some involve manual storage and retrieval of data; some are automated; and others are hybrid. Merging or cross-referencing with adult records may or may not occur, depending upon the agency and the jurisdiction. Access to juvenile records/pm, as well as their sealing or purging, may be governed by statute, by agency policy, or simply by local practice.

The complex situation as to juvenile criminal data, in particular, and juvenile justice information, in general, reflects "[t]he specialized treatment given juveniles and the existence of a separate set of institutions (courts, probation workers, record systems) ... based on the belief that special procedures for handling juveniles would serve their special needs, facilitate rehabilitation, and prevent premature criminalization."[2] The potential gap in policy objectives and information sharing between the juvenile justice system and the criminal justice system, both information and otherwise, marks what is termed the two-track system of justice.

In this appendix we put aside the central question of whether the use of the juvenile record/pm is germane and appropriate in the prosecution and sentencing of young adult felony suspects; and the question of whether it is effectual for these purposes. Instead, we concentrate on the inter-system information gap as a reason why juvenile records/pm are not brought fully to bear. In other words, we are concerned with whether the timely availability of a juvenile record/pm is problematical.

It is important to note that what we are referring to as juvenile records/pm are the equivalent of criminal records, that is, records of arrests for crimes, adjudications, and/or dispositions. This usage is to be distinguished from the broader connotations of the term juvenile record. For example, the *Standards Relating to Juvenile Records and Information Systems* defines a juvenile record as any record of or in the custody of a juvenile agency pertaining to a juvenile and maintained so that the juvenile is identified or may be identified.[3] (The definition of a juvenile agency given by the *Standards* would include the juvenile court and the probation department but not law enforcement agencies.) The *Standards* recognizes a separate category of juvenile police records.[4] Thus, juvenile records/pm subsumes juvenile police records and a portion of juvenile records (excluding, for example, social and psychological histories) in the terminology of the *Standards*.

Similarly, the *Principles for the Creation, Dissemination, and Disposition of Manual and Computerized Juvenile Court Records* gives a broad definition of juvenile court records, which includes the categories of legal records, social records, medical records, et al.[5] Our term juvenile records/pm incorporates a portion of the legal records but generally nothing else of the juvenile court records as defined in the *Principles*. Lemert distinguishes juvenile police records, probation department juvenile records, and juvenile court records by content, control, and use.[6] The nature of juvenile records/pm can be seen clearly in the context of his explanations.

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[2] Barbara Boland and James Q. Wilson, "Age, Crime, and Punishment," *The Public Interest*, No. 51, Spring 1978.

[3] *Standards Relating to Juvenile Records and Information Systems*, Juvenile Justice Standards Projects, Institute of Judicial Administration-American Bar Association Commission on Juvenile Justice Standards, Ballinger Publishing Co., Cambridge, Massachusetts, 1977, p. 5.

[4] *Standards*, pp. 139 ff.

[5] *Principles for the Creation, Dissemination, and Disposition of Manual and Computerized Juvenile Court Records*, Model Court Systems and Technology Committee, National Council of Juvenile and Family Court Judges, 1978.

[6] Edwin M. Lemert, "Records in Juvenile Court," Chapter 12 in Stanton Wheeler (ed.), *On Record: Files and Dossiers in American Life*, Russell Sage Foundation, New York, 1969, pp. 355-387.

II. THE EXISTENCE OF JUVENILE RECORDS/POST-AGE OF MAJORITY

When a juvenile is arrested for a criminal act, a police arrest record will be created. If the alleged crime is of a serious nature, the arrested juvenile will almost certainly be referred to the probation department (or a similar responsible agency) for the possible filing of a petition for the juvenile court to assume jurisdiction. Thus a probation department record will be created; and, given the assumption that the alleged crime is serious, a petition is likely to be filed with the resulting creation of a juvenile court record. Indeed, in extreme circumstances the juvenile court may waive jurisdiction to the criminal court so that the juvenile can be prosecuted as an adult, thereby becoming the subject of a criminal court record. The issue here is not whether the juvenile acquires a criminal record as the result of an arrest.[7] It is, instead, whether that record survives past the age of majority for possible application in adult criminal proceedings. We are not concerned with the incidental elimination of these criminal records, before or after the offender reaches majority, which occurs because the keeping agency simply decides to engage in file-cleaning to save space and trouble. Our interest is in the sealing and expunging of juvenile criminal records provided for by law or the systematic result of policy or rule.[8]

THE NATIONAL PICTURE

Consider statutory provisions for sealing or expungement of juvenile court records.[9] Eighteen states (Alabama, Arkansas, Hawaii, Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia, and Wisconsin) lack such laws. In two states (Alaska and Montana) sealing is mandatory when the juvenile reaches 18 years (or leaves the juvenile court's jurisdiction if it extends beyond the 18th birthday). Sealing or expungement is discretionary in the remainder. Whether this action requires the juvenile's petition, the court's motion alone, or both, varies from state to state. In most discretionary states there is a waiting period which must be free of known offenses before juvenile court records are eligible for sealing or purging.[10] This period, typically two

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[7] In a minority of jurisdictions (roughly 25 percent of the states) the juvenile court and the criminal court have some extent of concurrent jurisdiction. Depending on the age of the juvenile and the type of offense alleged, the court proceeding may originate in the criminal court. See Samuel M. Davis, *Rights of Juveniles—The Juvenile Justice System*, Appendix B. Conceivably, a juvenile court record could be absent in certain serious juvenile arrests in those jurisdictions.

[8] While we speak of sealing and expungement jointly in this discussion of the existence of juvenile records/pm, sealing actually involves the question of access rather than existence. Thus, it is considered on its own later in this appendix.

[9] The following information on sealing or expungement is drawn from J. Austin et al., *A Summary of State Legal Codes*, op. cit. Also, see the review of case law given in *71 ALP3d 753*, "Expungement of Juvenile Records."

[10] The recommendations of the IJA-ABA *Standards* (op. cit.) are that, in cases where a juvenile is adjudicated delinquent, all identifying records pertaining to the matter should be destroyed when:

"A. no subsequent proceeding is pending as a result of the filing of a delinquency or criminal complaint against the juvenile;

years or more, may be measured relative to a specified age, to the date of the most recent adjudication, to the date when court jurisdiction terminated, or otherwise.

Statutory provisions for the sealing or expungement of the juvenile (criminal) records of law enforcement agencies or probation departments are generally not given independently, but rather as adjuncts to the juvenile court record provisions.[11] Even where such explicit statutory mandates are lacking, one would expect the juvenile court's sealing or expungement order to be generally respected by other agencies possessing the affected parts of the juvenile's record. However, studies have shown that such orders may be far from effectual, statutory provisions or not, beyond the court's own files.[12] Comprehensive expungement in practice

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B. the juvenile has been discharged from the supervision of the court or the state juvenile correctional agency;

C. two years have elapsed from the date of such discharge; and

D. the juvenile has not been adjudicated delinquent as a result of a charge that would constitute a felony for an adult."

The recommendations of the National Council of Juvenile and Family Court Judges *Principles* (op. cit.) are that the juvenile record subject, at any time after the court's jurisdiction has been terminated, may apply to the court for destruction or sealing of his records, and that any juvenile record not destroyed or sealed on application of the juvenile shall be destroyed or sealed upon the following conditions:

"a. The child has attained the upper age of the original jurisdiction of the court; and

b. Two years have elapsed from the date of final discharge from the supervision of a court without a felony referral or a misdemeanor referral involving assaultive conduct against a person; and

c. One year has elapsed from the date of entry of a court order; and

d. There are no proceedings pending regarding a delinquency and/or status offense matter; and

e. There are no proceedings pending seeking conviction of a felony or of a crime involving injury to a person; and

f. There have been no felony convictions or convictions for crimes involving injury to a person."

[11] Following are illustrations (italics added):

Arizona: "A. On application of a person who has been adjudicated delinquent or incorrigible or on the court's own motion, and after a hearing, the juvenile court shall order the destruction of the files and records, *including arrest records*, in the proceeding, if the court finds: . . .

C. When a juvenile who has been adjudicated delinquent or incorrigible has attained his or her twenty-third birthday, the juvenile court may order destruction of files and records, *including arrest records* if the court finds: . . . ," *Arizona Revised Statutes Annotated*, Vol. 2, Titles 1-8, Section 8-247, West Publishing Co., St. Paul, Minnesota, 1978.

Connecticut: "Whenever any child has been found delinquent, and has subsequently been discharged . . . , such child, his parent or guardian, may file a petition with the superior court, and if the court finds that at least two years have elapsed from the date of such discharge and no subsequent juvenile proceeding has been instituted against him and he has not been found guilty of a crime, if such child has reached sixteen (note: 15 years if the maximum age of juvenile court jurisdiction) within such two year period, it shall order all *police and court records* pertaining to such child to be erased. Upon the entry of such an erasure order, *all references including arrest, complaint, referrals, petitions, reports and orders, shall be removed from all agency, official and institutional files*. . . . Copies of the erasure order shall be sent to *all persons, agencies, officials or institutions* known to have information pertaining to the delinquency proceedings affecting such child. . . ." *Connecticut General Statutes Annotated*, 1978 Special Pamphlet, Transfer of Trial Jurisdiction to Superior Court, Sec. 51-327, West Publishing Co., St. Paul, Minnesota, 1977.

New Jersey: "a. On motion of a person who has been the subject of a complaint filed under this act or on its own motion, *the juvenile and domestic relations court may vacate its order and findings and order the nondisclosure of social, psychological, legal and other records of the court and probation services, and records of law enforcement agencies* if it finds: . . . .

d. Upon entry of the order, the proceedings in the case shall be sealed . . . , *except that records may be maintained for purposes of prior record status*. . . .

e. Any adjudication of delinquency or in need of supervision or conviction of a crime subsequent to sealing shall have the effect of nullifying the sealing order." *New Jersey Statutes Annotated*, Title 2A, Administration of Civil and Criminal Justice, 2A:1-1 to 2A:14, Sec. 2A:4-67, West Publishing Co., St. Paul, Minnesota, 1978.

[12] See the discussion of the weaknesses of expungement procedures in Lemert, op. cit., pp. 382-383. See also Terry L. Baum, "Wiping Out a Criminal or Juvenile Record," *Journal of the State Bar of California*, Vol. 46, 1965, pp. 815-830; and B. Kogan and D. Loughery, "Sealing and Expungement of

turns out to be unreliable because it is complex and costly, and because the juvenile court's authority is normally limited to the matters that have been before it.[13]

What is important to note for our purposes here, however, is that high-crime-rate juveniles are unlikely to meet the conditions required for the sealing or expungement of their juvenile criminal records in those jurisdictions where these actions are discretionary by statute. Thus there is no serious question of the nonexistence by law of such records for those juveniles whom these records may serve to distinguish as potential high-rate young adults in criminal court.

Without a survey, it is difficult to perceive a national picture of local practices in getting rid of juvenile criminal records (say, at the age of majority) as a matter of policy or practice. Some would argue that the same rationale that leads to the confidentiality and protectiveness of juvenile proceedings justifies the systematic destruction of information on juvenile delinquency when adulthood is reached. Section III of this Appendix, which concerns Los Angeles County as a specific example, suggests the posture of various types of agencies on the elimination of recorded juvenile criminal information, even when not mandated by law. Certainly the policies and practices in that jurisdiction seem consistent with the notion that while young adults in general should not be stigmatized by their juvenile misdeeds, the retention into adulthood of the records of those who have repeatedly committed serious crimes is justified by the needs of law enforcement and criminal justice.

When one is considering the existence of juvenile records/pm, it is useful to distinguish summary record information from extensive or complete records, for example, as might be contained in a case jacket. Establishing that a young adult in criminal court has a serious juvenile criminal record would seem to require the use only of summary information, the type more likely to be retained when resource conservation is a decisive issue. Yet, distrust of juvenile summary information by practitioners in criminal court is to be expected, for legal characterizations of offenses tend to mask a wide range of culpability of offenders and gravity of criminal acts.

In this connection, fingerprints and photographs should be mentioned as one aspect of extensive criminal records of juveniles. One of the basic uses for fingerprints is to establish the presence or absence of a record of previous offenses, which particularly concerns us here. But this is not a basic use for photographs. Finger-

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Criminal Records—The Big Lie," *Journal of Criminal Law, Criminology, and Police Science*, 1970, pp. 378, 383-385.

[13] Nonetheless, the recommendations of the *Standards* (op. cit.) are that

"A. Whenever a juvenile's record is destroyed pursuant to this Part, the juvenile court should notify:

1. the chief of police of the department that arrested the juvenile or made application for the petition or complaint that was filed;
2. the commissioner of the state correctional agency if the juvenile was committed to the agency;
3. the commission of the state probation department; and
4. any other agency or department that the juvenile court has reason to believe may have received a copy of any portion of the juvenile's record or included a notation of the juvenile's record in its own records.

"B. Upon receipt of notification pursuant to subsection A., the person, agency, or department should search its records and files and destroy any copies or notations of the juvenile's record that have been destroyed by the juvenile."

The recommendations of the *Principles* (op. cit.) are that: "A court order shall be sent to all offices or agencies in possession of the subject's records mandating compliance with the order (to seal or destroy). The court order shall contain a provision that the order itself be destroyed after full compliance with the order. All offices or agencies must respond in writing within 60 days, unless sooner ordered by the court, stating that they have fully complied."

printing and photographing of juveniles have been matters of continuing controversy, for they have been regarded as strongly stigmatizing. At the same time, the need for positive identifications in both juvenile and criminal justice is unquestionably vital. Statutory regulation of juvenile fingerprinting is uneven; fewer than one-half of the state codes contain such provisions.[14] Only a few states limit the fingerprinting of juveniles and provide for the expungement of the fingerprint records.[15] The importance of a fingerprint record associated with a juvenile record/pm is, of course, the positive association with the young adult before the criminal court.

III. ACCESSIBILITY OF JUVENILE RECORDS/POST-AGE OF MAJORITY

Given that juvenile criminal records have been created and thereafter not destroyed, will they be accessible to criminal court practitioners during the criminal proceedings of a young adult felony defendant? Inaccessibility of juvenile records/pm may result from statutory or regulatory proscriptions, or simply because these data are physically difficult to retrieve in a timely fashion. Our discussion here will address largely the first of the impediments. On the matter of the physical inconvenience of retrieving juvenile criminal history, it suffices to say here that one would not expect convenience of retrieval until the utility of these data for the intended purpose has been demonstrated.

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[14] According to a decade-old survey of state codes, twenty jurisdictions had statutes on the fingerprinting of juveniles. Ten of them required court permission for taking the fingerprints of juveniles. Two states otherwise limited the fingerprinting of juveniles. The remaining eight dealt only with the use of, and access to, fingerprint records, and two of them provided for expungement of the fingerprint records. See E. Ferster and T. Courtless, "The Beginning of Juvenile Justice, Police Practices, and the Juvenile Offender," *Vanderbilt Law Review*, Vol. 22, 1969, pp. 599-600.

A more recent source, the Commentary to the *Standards* (1978, p. 145) states: "For the most part, the twenty-three states that have recently passed legislation regulating the fingerprinting and photographing of juveniles have included standards that are somewhat more restrictive than adult practices. Illinois . . . prohibits police from forwarding juvenile prints and photos to the F.B.I. and to the central state depository; South Carolina . . . prohibits the fingerprinting and photographing of juveniles without judicial consent; and Florida limits fingerprinting and photographing to felony cases, limits access to police, the juvenile court, and the juvenile, and requires destruction of such records at age twenty one."

[15] See footnote 8 above. The New Jersey provision limits fingerprinting and photographing only of juveniles under the age of 16, although those of ages 16 and 17 years are within the jurisdiction of the juvenile court. It states:

"a. Fingerprints of juveniles under age 16 may be taken only in the following circumstances:

(1) Where latent fingerprints are found during the investigation of an offense and a law enforcement officer has reason to believe that they are those of a juvenile, he may fingerprint the juvenile for the purpose of comparison with the latent fingerprints.

(2) Where a juvenile is detained in or committed to an institution, that institution may fingerprint the juvenile for the purpose of identification.

b. All records or copies of the fingerprints of juveniles shall be retained by the department, agency, or institution taking them and shall be forwarded to the court for destruction when the court determines that the purpose for taking of the fingerprints has been fulfilled, except that fingerprints taken of a juvenile of more than 16 years of age may be retained by a law enforcement agency for criminal identification purposes if such juvenile is adjudged delinquent.

c. No juvenile under the age of 16 shall be photographed for criminal identification purposes without the consent of the juvenile and domestic relations court." *New Jersey Statutes Annotated*, op. cit., Sec. 2A:4-66.

The recommendations of the *Standards* follow, in part:

"A. Law enforcement officers investigating the commission of a felony may take the fingerprints of a juvenile who is referred to the court. . . .

B. If latent fingerprints are found during the investigation of an offense and a law enforcement officer has reason to believe that they are those of the juvenile in custody, he or she may fingerprint the juvenile regardless of age or offense for purposes of immediate comparison with the latent fingerprints. . . .

C. If the court finds that a juvenile has committed an offense that would be a felony for an adult, the prints may be retained by the local law enforcement or sent to the (state depository) provided they are kept separate from those of adults under special security measures limited to inspection for comparison purposes by law enforcement officers or by staff of the (state depository) only in the investigation of a crime. . . .

F. Any fingerprints of juveniles that are retained by a law enforcement agency should be destroyed when the juvenile's police record is destroyed pursuant to Standard 22.1."

THE NATIONAL PICTURE

To begin with, juvenile court records are "confidential" by statute in nearly every state, and the statutory provisions for privacy include police juvenile records in more than one-half of the states.[16] While probation department juvenile records are usually not mentioned explicitly in such statutes, one would expect them to be handled with restrictions similar to court records; in fact, much of the work product in the form of documents produced by probation departments in juvenile cases is incorporated in the juvenile court records. However, because of ample exceptions included in the confidentiality statutes,[17] the effect is to achieve confidentiality

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[16] The frequency distribution of jurisdictions (50 states plus the District of Columbia) with respect to confidentiality is as follows:

	Number of Jurisdictions	
Court records and police records	28	(55%)
Court records only	18	(35%)
Neither	5	(10%)
	51	(100%)

The jurisdictions are specifically as follows: Court records and police records—Alabama, Alaska, California, Colorado, Washington, D.C., Georgia, Hawaii, Illinois, Kansas, Kentucky, Maryland, Massachusetts, Minnesota, Missouri, Montana, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Wisconsin, Wyoming. Court records only—Arkansas, Connecticut, Delaware, Florida, Indiana, Louisiana, Maine, Michigan, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oregon, Rhode Island, Utah, Washington. Neither—Arizona, Idaho, Iowa, Mississippi, West Virginia. Derived from J. Austin et al., *A Summary of State Legal Codes*, op. cit.

[17] In 18 jurisdictions that have confidentiality statutes affecting court records only, 3 (17%) have "specified exceptions only" (e.g., "open to agencies with custody of juvenile"); 15 (83%) have open-ended (e.g., "open to others on order of the court") plus specified exceptions. In 28 jurisdictions with confidentiality statutes affecting court records *plus* police records, 7 (25%) have specified exceptions only, and 21 (75%) have open-ended plus specified exceptions.

A revealing example of statutory confidentiality provisions is given by Section 2A:4-65 of New Jersey Statutes, Title 2A, Civil and Criminal Justice:

"a. Social, medical, psychological, legal and other records of the court and probation department, and records of law enforcement agencies, pertaining to juveniles charged under this act, shall be strictly safeguarded from public inspection. Such records shall be made available only to:

(1) Any court or probation department;
(2) The Attorney General or county prosecutor;
(3) The parents or guardian and to the attorney of the juvenile;
(4) The Division of Youth and Family Services, if providing care or custody of the juvenile;
(5) Any institution to which the juvenile is currently committed;
(6) Any person or agency interested in a case or in the work of the agency keeping the records, by order of the court for good cause shown; and
(7) Any law enforcement agency when such records are necessary in connection with the investigation or particular acts of delinquency or crime, or when such records are necessary to assist in the protection, apprehension or location of a particular juvenile.

b. Information as to the identity of a juvenile, the offense charged, the adjudication and disposition may be disclosed to the victim or a member of the victim's immediate family.

relative to the private sector, i.e., the media and the public, but much less than confidentiality relative to law enforcement and criminal justice. Unquestionably, there is a ready flow of juvenile criminal information among law enforcement agencies, and between law enforcement agencies (including the prosecutor's office) and the probation department, which sometimes is facilitated by statute and encouraged by standards.[18] A majority of police departments share information dealing with delinquent youths in a county or regional records system.[19] By contrast, there tend to be restrictions on the flow of juvenile court record information to law enforcement agencies, often in the nature of a requirement for a court order.[20]

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c. Information as to the identity of a juvenile 14 years of age or older adjudicated delinquent, the offense, the adjudication and the disposition may be disclosed to the public where the offense for which the juvenile has been adjudicated delinquent involved violence to the person or, if committed by an adult, would constitute a high misdemeanor, murder, manslaughter, destruction or damage to property to an extent of $500 or more, or the manufacture or distribution of a narcotic drug, unless upon application at the time of disposition and for good cause shown, or upon its own motion, the court orders the withholding from public dissemination of all or a portion of such information on the grounds that public disclosure would not serve the best interests of the juvenile and the public. . . ."

[18] For example, Sec. 828 of California's Welfare and Institutions Code provides the following, in part: . . . "[A]ny information gathered by a law enforcement agency relating to the taking of a minor into custody may be disclosed to another law enforcement agency, or to any person or agency which has a legitimate need for the information for purposes of official disposition of a case. When disposition of a taking into custody is available, it must be included with any information disclosed."

Another source for model rules (for law enforcement) gives the following guidance on the release of arrest and conviction records, in part:

"Rule 401 General Rule. Unless otherwise specified by state or federal statute or federal executive order, arrest and conviction records or information contained therein may be released only under the following circumstances:

(i) To law enforcement agencies of any jurisdiction for law enforcement purposes;

(ii) To criminal justice personnel for purposes of executing the responsibilities of their position in a matter relating to the individual whose record is requested; . . .

"Rule 404 Release of Juvenile Records. Juvenile records may be released pursuant to the general provisions of Rule 401, unless otherwise prohibited by law. . . ."

Model Rules—Release of Arrest and Conviction Records, Project on Law Enforcement Policy and Rulemaking, Approved Draft, Revised June 1974, College of Law, Arizona State University, and Police Foundation, Washington, D.C.

[19] A survey of police departments on the question, Is there a sharing of information dealing with delinquent youths in a county or regional system?, produced the following results in 1971:

Population Group (thousands)	Number of Police Departments Answering	Number of Police Affirmative Responses	Percentage
10–24	577	396	68.6
25–49	398	257	64.6
50–99	226	144	63.7
100–249	98	58	59.2
250–499	37	24	64.9
500–999	26	14	53.8
1000 and larger	8	6	75.0
Total	1370	899	65.6

Reported in R. W. Kobetz, "The Police Role and Juvenile Delinquency," *International Association of Chiefs of Police, Inc.*, 1971.

[20] The *Standards* (p. 87) provides as follows: "5.7 Access to juvenile records for law enforcement or judicial purposes limited.

A. Access to juvenile records should not be provided to a law enforcement agency by a juvenile agency unless:

1. the consent of the juvenile who is the subject of the record or his or her parents is obtained in accordance with Standard 5.4;

2. a judge determines, after *in camera* examination of the record of a designated juvenile, that such access is relevant and necessary. . . ."

The *Principles* sets out the following as some of the principles governing the dissemination of juvenile court information:

There is little doubt that a posture of confidentiality with regard to public access to juvenile records carries over when the juveniles involved become young adults. But when we focus only on young adults who engage in repetitive serious crime as juveniles, we observe that not only is it likely that their juvenile criminal records will not be routinely destroyed when they reach the age of majority, but also access to juvenile records/pm in most jurisdictions is not prevented by legal and other formal barriers.

IV. CONCLUDING REMARKS

The review appears to establish that in most states, accessibility to juvenile records by the adult criminal justice system is a matter of local policy determination. Such records are maintained and available in a variety of sources, and their use by criminal justice agencies is not legislatively restricted. This finding suggests that the key issues involving the use of juvenile records in young adult criminal proceedings are:

1. Practical limitation on the accessibility of relevant juvenile record information as to key decisionmakers in the adult system—primarily prosecutors and the courts.
2. The degree to which juvenile record information can affect dispositional decisions in adult proceedings.

" . . . J. Law Enforcement Agencies:

(1) the right upon written request, or general order of court, to receive limited information from legal record (dispositional and identification information only); the right to identification information is to be exercised exclusively for purposes of executing an arrest warrant or other compulsory process or to aid a current investigation.

(2) no right or privilege to inspect or copy information from social record. . . ."

Appendix B

JUVENILE RECORD USE IN LOS ANGELES COUNTY

Los Angeles County is an example of a well-run, information-rich jurisdiction (in terms of its access to juvenile records). As such, it is fairly typical of most of the larger metropolitan jurisdictions in California except for the fact that its extreme size (over 450 deputies spread over eight different major court locations) gives it management problems not faced by smaller offices. Los Angeles has fairly well-specified filing policies, Career Criminal Prosecution, PROMIS, and well-defined plea bargaining policies.

Law enforcement in Los Angeles County is provided by a number of police agencies, the largest of which are the Los Angeles Police Department (serving the city of Los Angeles) and the Los Angeles Sheriffs Department (serving the unincorporated areas of the county and a number of the smaller cities). These two departments are among the largest and most modern departments in the country, in terms of their procedures and their use of modern information technology. Likewise, the criminal identification section (CII) of the State Attorney General's office is among the most progressive in the country.

CREATION OF JUVENILE RECORDS

Each law enforcement agency creates its own record at the time of arrest. In addition, the Sheriffs Department has maintained an automated juvenile index to which most county law enforcement agencies contribute records of arrest on a voluntary basis.[1] Most of the records within these police systems will contain the police disposition in the case, i.e., whether the juvenile was counseled and released or whether a petition was requested. Further, if the report of the juvenile arrest is sent to CII with an accompanying set of fingerprints, a record will be created at the state level.

ACCURACY AND PURGING

Identification policies for juveniles are unique to each police department. Photographing, fingerprinting, and lineups are all permissible and done at the discretion of the department. The more serious the crime, the more likely that positive steps will be made to insure an accurate identification.

There is no policy in effect to systematically purge police files of old juvenile records. Yet, in pre-automation times, the sheriff would periodically purge the juvenile index in order to create more storage space.

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[1] This index of juvenile contacts is now being transferred to the county probation department so that they can also include final disposition data.

CREATION OF JUVENILE CRIMINAL HISTORIES

The Los Angeles Probation Department, in its role of advising both prosecutor and court on how to handle a particular juvenile case, has the most direct interest in creating an accurate history of all juvenile arrests, findings of the juvenile court, and dispositions. Indeed, this chronological record is the principal basis for the Probation Department's disposition recommendations. The criminal history, including a brief narrative of the facts of each case, is created the first time that Probation is called upon for a recommendation. It is updated at each subsequent contact. The automated law enforcement indexes are much more spotty as to whether or not they include dispositions, since they rely on voluntary submissions of disposition reports from various agencies with no strong attempt to insure compliance. The best automated index of juvenile arrests and disposition is maintained by CII. But it only includes arrests for which a fingerprint card is included, and CII will print the record of the arrest only if the disposition is known.

Availability of Juvenile Records to the Prosecutor in Adult Criminal Cases

The Los Angeles District Attorney's office is extremely conscious of prior record in handling cases. Whether to go hard, medium, or soft in filing charges or accepting pleas is determined by the deputies' perception of the defendant's criminal record. Of course, the more serious the current charge, the more likely that the outcome will be influenced by the facts of the case and the strength of the evidence rather than by considerations of prior record.

In response to our survey, the L.A. District Attorney's office indicated that it receives juvenile records from the police in 70 to 90 percent of their young adult felony cases. To accomplish this, the investigating police officer must use his own initiative and request any possible juvenile record from the Juvenile Records Branch of his own department. This is frequently done to learn more about the suspect's background and associates and to give the district attorney more reason to go hard on the case if a record can be established.

The most authoritative source of adult criminal records in California is CII. A CII rap sheet will contain a record of most arrests throughout the state and their disposition. It will also include out-of-state arrests that have been picked up from the FBI system. Adult rap sheets also include juvenile arrests (if they were sent in by the arresting agency) where the disposition is known.

Record searches are cumulative. Each searcher starts with the history that someone else has compiled and adds to it. The police first look for the CII rap sheet that was ordered at the time of the suspect's last arrest. If they find it, they update it with any more recent entries and forward it to the district attorney with their investigation report. If they do not find a CII rap sheet, then they search their own arrest files (including their juvenile files). Any records found there are also forwarded to the district attorney.

THE DISTRICT ATTORNEY'S USE OF JUVENILE RECORDS

Prior record can affect primarily four distinct decisions in the prosecutor's office: who handles the case, the severity of the charges that are filed, the severity of the charges that the defendant must plead to for a successful bargain, and the length of the resulting sentence.

First, Los Angeles has two different types of career criminal units. One, funded under a state grant, is targeted exclusively on robbers and does not use juvenile records for identification purposes. The second unit does. This unit, funded by a discretionary LEAA grant and concerned with gang violence, targets gang members who have committed violent crimes, regardless of their age. In particular, this unit uses juvenile records to select their cases, and to argue for waiver of juvenile cases to the adult court and for other forms of harsher treatment. Of course, this unit only handles a very small percentage of the total office workload.

The second decision concerns the severity of charges to be filed. The California Penal Code provides for either felony or misdemeanor handling of many crimes, at the discretion of the prosecutor or the municipal court.[2] Prior record, including juvenile record, is reported to affect how this discretion is exercised. As to the specific charges filed, these are normally governed by the strength of the evidence rather than the characteristics of the defendant.

The next decision concerns the basis for an acceptable plea bargain. The basic concern of the trial deputy is whether he is dealing with an "ordinary bad guy" or a "real bad guy." The "real bad guys" have to plead to more of the charges and are granted fewer sentencing concessions, if any. In making this determination the deputies more or less assume that most defendants have some kind of record, whether or not it is in the file. In their experience, people do not become felons overnight. For a defendant to be considered a "real bad guy" he has to have a record of several serious crimes or to have injured some victims.

Finally, prior record, including juvenile record, can affect the sentence of the court, over and above whatever the prosecutor agrees to in a plea bargain. Under the new (1977) California Determinate Sentencing Act, prior terms in prison can be pled and proven as separate elements of the charge, adding one to three additional years to the base sentence. Prior convictions that did not result in state prison time can be used as grounds for selecting the higher (aggravated) of the three base terms provided for any specific crime. Juvenile convictions cannot lead to enhancements, since they cannot result in prison terms, but they can result in an aggravated term if they involve violent crimes.[3]

Furthermore, the California Penal Code provides that young adults can be sent to the California Youth Authority (CYA), in lieu of prison, up until their 21st birthday at the discretion of the court. A CYA commitment is viewed by some judges as an intermediary step before state prison—one more chance at rehabilitation before the offender must face the more hopeless alternative of state prison. However, if the juvenile record shows that the defendant had a chance at CYA as a juvenile, it is less likely that he will get one as an adult. The view is that he may already be too jaded for the CYA program.

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[2] Section 17.b, California Penal Code.
[3] Rule of Court 421.

In summary, Los Angeles law enforcement agencies have fairly complete records of their juvenile contacts, but much poorer records of the dispositions. The prosecutor and court are likely to learn about any significant juvenile convictions in California, either through the arresting agency, CII, or from the pre-sentence report. Plea bargains in felony cases are invariably made contingent on the outcome of the pre-sentence investigation report conducted by the probation department.

The deputy prosecutors handling cases voice little concern for the quality of juvenile records. Most defendants are expected to have some record, whether or not it shows up in the file. Only serious juvenile crimes (usually involving violence) will have a significant effect on the processing of a case. The deputies are confident that information about most such convictions will turn up, one way or another, unless the convictions are out of state.

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